IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIRCUIT CIVIL CASE NO. 97-5968-CI-11

JOHN EASTMAN,
Plaintiff,
v.
BROWN & WILLIAMSON TOBACCO CORP.,
individually and as successor by
merger to THE AMERICAN TOBACCO
COMPANY, a foreign corporation;
PHILIP MORRIS USA, INCORPORATED,
a foreign corporation,
Defendants.

BEFORE: HONORABLE ANTHONY RONDOLINO
Circuit Judge
PLACE: Courtroom D
Judicial Building
545 First Avenue North
St. Petersburg, Florida
DATE: Thursday, March 13, 2003
TIME: 8:30 a.m.
REPORTED BY: Yvonne P. Habis
Court Reporter, Notary Public
State of Florida at Large

JURY TRIAL -- VOLUME VII

Pages 592 - 711

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PROCEEDINGS CONTINUED

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THE COURT: Thank you, Sheriff. Good morning, Counsel.
MR. ACOSTA: Good morning, Your Honor.
MR. LYDON: Good morning, Your Honor.
THE COURT: I hear there is a motion.
MR. ACOSTA: Yes, sir. I was handed just before, a few minutes ago, a set of PowerPoint slides that have been printed out, and I have an objection to them. I just talked with Mr. Lydon. We have an agreement, but I really didn't get a chance yet to talk with Counsel for Brown & Williamson. These are Brown & Williamson's slides. What they -- they are, are they are questions and answers from Mr. Eastman's depositions. Let me show you the slides. This might help you.
THE COURT: Are these things that you would propose to use in your opening?
MR. PARRISH: Yes, Your Honor. They are
actually verbatim quotes with cite sources on the bottom.
MR. ACOSTA: Well, that's the problem, Judge. They are not exactly verbatim quotes, but they purport to be. They are evidence, what will be evidence purportedly in the case. We had a discussion yesterday about showing the jury evidence and the reason that it's a problem is under the
Rule of Completeness I am prejudiced if he puts up a quote and he says this is Mr. Eastman's testimony at his deposition, I should be entitled to show the rest of the answer or show that quotation in context under the Rule of Completeness. I don't mind Counsel, and Mr. Lydon and I have agreed to this, Defense Counsel can say, you know, you are going to hear testimony that Mr. Eastman liked to smoke. That's fine. I don't mind that. But when you show the deposition question and answer, I am then precluded from putting it in the right context. There is a question in there, for example, where it's cut -- there is a number of ellipse marks in the middle of it where they cut out the contextual remarks that Mr. Eastman made. They suggest that he said that not '40s the whole world knew that there were people telling you not to smoke because you would get a disease. But the question -- the answer is much, much larger than that, and in context he says -- if you want, maybe I should read the whole thing. He says, I suppose there is a notion that one is less hot than another. I don't know quite how that translates in any meaningful way because I know what a cigarette is and what it contains or what it partially contains and I knew what I was smoking for and all the reasons.
THE COURT: Can I stop you for a moment?
MR. ACOSTA: Yes, sir.
THE COURT: Your argument is not based upon
the inadmissibility of the propose slides; is that correct?
MR. ACOSTA: It is at this point in time. If later in the trial, if he wants to introduce those portions as evidence in the case, then I will stand up and say I was a Rule of Completeness issue and I'd like the rest of the answer read so that this is in context.
THE COURT: Perhaps you misperceive what I'm asking you. I'm asking you if your argument is based -- you suggested that we had some arguments like this yesterday.
MR. ACOSTA: Yes.
THE COURT: The arguments that I heard yesterday were that they were objecting to the admissibility of a document and before that was determined, they would object to using a document in front of the jury which might ultimately not be admissible. That's not the question here. It's uncontroverted that this sworn

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testimony in the past is going to be admissible in the case, isn't it?
MR. ACOSTA: Yes, or a part of it.
THE COURT: So -- well, are you suggesting that there is part of this that you are going to argue is inadmissible?
MR. ACOSTA: No, that there are other parts of it that need to be considered with it at the same time.
THE COURT: I understand that completely. But isn't it the subject of opening statement for either side to select what evidence they wish to highlight for the jury, and if they wish to give an incomplete presentation, the fact that they did that would become apparent to the jury? As an example, if a prosecutor got up and put up a slide saying that the defendant has confessed and here's his confession that I shot Mary Smith and leaves it at that, the next paragraph starts out, I killed her in self defense as she came at my family with a machine gun, well, the jury is going to see through that.
MR. ACOSTA: Perhaps in that situation, yes, but this is a little bit different. The prejudice that happens in this kind of a case where you have got a 600-page deposition and a very long trial, when you are not permitted to put these quotes in context when they come out, the jury can easily be confused and mislead as to what was meant by Mr. Eastman at the time, and then to come back later and try to the correct the idea that, you know, what they said about smoking, they said the same thing, it says in his answer, about Coca Cola and don't cross the street and don't do this and don't do that because you might be hurt.
THE COURT: Well, let me understand. Then, suppose he doesn't show these portions of the depo. Are you proposing he wouldn't be able to enlighten the jury as to the words?
MR. ACOSTA: No. He can enlighten them as to what he remembers the testimony to be, I don't have a problem with that. It's when -- it's when you give it, when you show, this is the deposition, this was his sworn testimony, what he is really doing is he is presenting evidence to the jury in his opening. He is not telling them what the evidence is going to be. He is telling them, this is the evidence. And that's my objection. I don't mind him telling them what the evidence is going to be. It's different when you say, this is the evidence. And that's my objection.
THE COURT: All right. Your response?
MR. PARRISH: It's comment and relevant evidence that's coming into evidence. I can't imagine that a plaintiff would not want to be able to highlight out, as I'm entitled to do, his testimony about the issues in the case. And that's all we are trying to do.
THE COURT: Well, I understand that, but isn't the opening different from the closing in that respect?
MR. PARRISH: Absolutely.
THE COURT: You are enlightening the jury as to what you anticipate the evidence will show and it is somewhat different to show them the evidence.
MR. PARRISH: Well, I suppose that the difference is that it makes it harder on the jury. They can either listen to me drone on and read slowly the precise quotes, which I am entitled to do, and say that's what the evidence will show, or it can go more quickly and more easily for them to understand it and use a visual aid. That's the only difference.
THE COURT: Okay. Well, I'm going to side with plaintiff in this regard. When you have a 600-page deposition, highlighting selected portions of it yet to be introduced evidence in front of the jury, would have a tendency to be misleading in the absence of the ability of the opposing party to use the Rule of Completeness. That's not to say you can't indicate that you expect the evidence will demonstrate that he has, in fact, made statements of that type in the past.
MR. PARRISH: Thank you, Your Honor.
THE COURT: All right. What's next?
MR. ACOSTA: That was it, Judge. We are just waiting for the jury, I guess.
THE COURT: I hear the jury is all assembled and waiting for us.
MR. LYDON: Your Honor, one matter. We ask to invoke the Rule of Sequestration, I understand is the procedure down here.
THE COURT: Very well. Pursuant to Florida Statute 90.616, the Rule of Sequestration will be invoked. If there are any witnesses in the courtroom, you must leave the courtroom during the

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proceedings. You may not discuss your testimony with any other witnesses during the case or are you permitted to discuss these matters with Counsel during the case. The lawyers are advised to instruct their witnesses pursuant to the Rule. Anything else?
MR. LYDON: No, Your Honor.
THE COURT: Very well, Sheriff. Let's bring the jury in at this time.
THE BAILIFF: Yes, Judge.
THE COURT: Our monitor is not showing anything. Is that the way it's supposed to be?
MR. ACOSTA: I believe so.
THE COURT: Okay.
MR. ACOSTA: I'm not going to use the monitor,
Judge.
(Thereupon, the jury was returned to the courtroom.)
THE BAILIFF: The jury is present, Your Honor.
THE COURT: Come right in. Be seated. I know sometimes, initially, there is a little
hesitation -- everybody else can be seated -- because you come in and everyone else is standing, you don't know whether you should stand or sit, but they are standing in honor of you, in respect of you. So you are kind of like the judge. The judge comes in and down, you don't have to stand.
Welcome back. As you recall when I released earlier this week, I advised you that you would be coming in this morning about nine o'clock and we would commence with an initial instruction from the Court to you about your responsibilities and a little bit about how the procedures work here in a trial like this. And, frankly, these instructions that I'm about to give you are written instructions that are approved by the Florida Supreme Court and we give these instructions in every civil case.
Of course, you have now been sworn to be the jury to try this case. as you know, this is a civil trial involving a disputed claim or claims between the parties. Those claims and other matters, which you would need to know about, will be explained to you later. By your verdict at the conclusion of the case, you will decide any disputed issues of fact. During the trial, I will decide any questions of law that arise, and before you retire to the jury room to begin your deliberations, I will instruct you on the law that you are to apply for the facts as you find them to be proven from the evidence. Therefore, it is your responsibility to listen carefully to the witnesses, to observe the evidence, to keep an open mind, and when you go back into the jury room to make a decision based upon the facts as you find them to be proven in this case. The function the Court and the function of the jury are thus separate and distinct and this is one of the fundamental principles of our system of justice.
Reaching a verdict in the case will be your job exclusively. I cannot participate in your decision-making process in any way and, as such, you should not speculate about how I might evaluate the testimony of any witness or any other evidence in the case and you should not think that I prefer one verdict over another. In reaching your verdict, you should not consider anything that I say or do during the trial except for my specific instructions, obviously. Those instructions might occur during the trial. It may very well be that I will tell you to ignore a particular statement that was blurted out by a witness, or that I would not admit a particular piece of evidence into evidence. And, of course, as I said, at the end of the case I'll be giving you comprehensive legal instructions for to you use in your deliberations.
Before we proceed any further, it might be helpful for you to understand how a trial actually proceeds her in Florida. In a few moments, the lawyers from both sides will be given an opportunity to make opening statements. Opening statements are designed to allow the parties to explain to you the evidence and testimony that they expect might be presented during this trial. The opening statements being made by lawyers are not testimony and, frankly, anything that the lawyers say, whether it be in their opening remarks, in their closing remarks at the end of the case, or in the way that they ask a question is not evidence. That is not testimony. And you will find perhaps during the case that we refer to evidence inclusively, that is, it might be a physical piece of evidence such as a photograph or diagram. It might also be the testimony of a

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witness. But the point here is that anything that the lawyers say, although it may be important in terms of guiding you in ways that you might consider the evidence, it is not actually evidence and testimony. Following those opening remarks, the plaintiff will commence their case. And you will notice during the trial that since the plaintiff has the burden of proving the claims it made, the plaintiff starts out first. Of course, if there are any defenses raised, the defendants have the burden of proving the defenses raised, but the defendants go second. And that will be occurring throughout the trial, generally.

Now, the presentation of witnesses, you are probably familiar with that. We have live witnesses. They will be sworn. They will take the witness stand here and they will testify by answering questions on direct examination from the proponent of the witness and cross examination by the other sides. There may also be witnesses that testify by way of deposition. That is a sworn statement given at another time. And we may have video depositions. That is a sworn statement given at another time which have been video taped or we may have portions of depositions, sworn statements which are transcribed, read to you at the trial.

Obviously, in a case like this, there will be exhibits, physical items of evidence. Exhibits will be offered to the Court for consideration as to the introduction of those exhibits. I might accept or reject, admit or not admit is another term that we use. If an item of evidence is accepted, it is received into evidence. It will be marked and received. And at the end of the case it'll actually go back into the jury room with you. There may be items of evidence that are submitted and rejected. Those items will not go back into the jury room with you. Very often during a trial, an item of evidence is received by the Court and you don't actually get a chance to look at it. In this trial, we have a lot of audio/visual aids and you see there is a screen here, and very many times items of evidence will be portrayed on the screen so that we can all see them at once. There may be items of evidence that are not portrayed in that way. But even if you are not able to see an item of evidence as it's being introduced, be assured you will have that item of evidence if it's in evidence back in the jury room during your deliberations. And you will given all the time you need to carefully, examine, read, and study the physical items of evidence. You'll notice that I say, at the end of the case. You will not have those items at any time in the jury room before you commence our deliberations, although you might actually hold them and look at them here in court under certain circumstances.

After both sides, and all sides, since there are three parties in this case, have been given an opportunity to make presentations of evidence to you, the attorneys will be allowed to make closing remarks, closing statement, sometimes referred to as closing argument. Once again, this is the chance that the lawyers have to make suggestions to you as to how you might find the evidence to be from the case, that is they will argue to you what has actually been proven, how you might find the facts to be. And they will further, since they will be aware at the time they make their closing arguments of the precise legal instructions that I will given you after the closing remarks, they will make suggestions to you as to not only how you might find the evidence from the testimony, but how, once you find the facts to be, that you apply those facts to the law. Once again, your determination on what the facts are, your ultimate determination about how the facts are applied to the law in the case is the sole determination of the jury as a whole when they deliberate. But, naturally, you are to consider and listen to the closing remarks of the lawyers for their suggestions as to how you might find the facts and apply them to the law.

At the conclusion of closing remarks, the Court will instruct you on the law. It has been my practice in civil and criminal trials, whenever possible, not only to read the jury instructions to you, but to provide a copy for your use in the jury room of the written law instructions in the case. I'm planning on doing that in this case, if at all possible. And I would find it very unusual if we are not able to do that. I think it's unfair even if we had a jury of lawyers or judges to expect that you will sit there and listen to the law on a onetime basis, and then go back in the jury room and remember something you have heard once. So it's been my practice to provide the written statements of the law and instructions to you and I plan on doing that in this case. That's how

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the trial will be run.
Obviously, you should give careful attention to the opening remarks and the testimony and evidence as it unfolds in this case. And I'll point out to you that because we are very structured in the Rules of Evidence and Procedure, this is not like a movie or a novel or a TV show. Things may not come out in a precise, chronological fashion because witnesses are not permitted to sit on the witness stand and relay information in a broad narrative. They have to answer specific questions and, of course, the order of presentation is such that it may not be completely logical. That's one of the reasons that we expect you to pay attention to the opening remarks becasue that gives you kind of an overview of the case. Sometimes I refer to the opening remarks as the cover on a jigsaw puzzle. If you went into K Mart to buy a jigsaw puzzle and all they had was a clear piece of plastic and you would look in there and see a bunch of pieces of a puzzle, you would have no idea whether it was the Eiffel Tower or a covered bridge. And so the opening remarks would be a suggestion that, like the cover that, well, if all the pieces of the puzzle were there and they were all put together exactly right, maybe this is going to look like the Eiffel Tower or maybe it's not, but at least you would have an idea of the concept that exists. Since it's your job to pay careful attention to the testimony and the evidence as it comes out, I want you to promise me if you cannot see something that you are supposed to see or hear something that you are supposed to hear, that you won't be shy that, you will say, Judge, I couldn't hear that or could you move that so we can see, because I wouldn't want you all to get back there in the jury room and think that, well, the person sitting next to you heard it or saw it, but nobody did, and we have to go through this all over again because you didn't hear things that you or see things that you needed to in the case.
This case is to be concluded by your deliberations. You are not to begin making up your mind about the case today. It's not appropriate to listen to the opening remarks and to make up your mind. That's just good old common sense because you haven't -- after the opening remarks, you haven't heard any evidence. You haven't heard any testimony. After the first five witnesses, you haven't heard perhaps other witnesses that might bear upon the issues. And you, of course, haven't heard the law. And so in terms of good common sense we want you not to be begin formulating an opinion, a decision, or making up your mind in this case, and you are supposed to keep an open mind throughout. You should not form or express any opinion about the case until you have heard all of the evidence, the closing remarks, the instructions, and you have been sent back into the jury room to talk about the case as a group. The case is supposed to be tried in the courtroom in front of all of the parties, in front of the judge, in front of you, and you must not conduct any investigation or experiments or attempt to find out additional information on the Internet or in publications or talking to other people about it. So I'm instructing you at this time that you are not to visit the scene, if there is such a thing involved in this case, the occurrence. I don't believe there is. You should avoid reading any materials or information which you think might bear upon the issues presented in the case, although there might be all manner of information about the subject matter of this case, tobacco, cigarettes, smoking, et cetera. You should, similarly, avoid reading newspaper headlines or articles bearing upon that case or the subject matter of this case. There might indeed be newspaper articles about this case. There might be television or radio broadcasts that include matters about this case. I'm instructing you that you should avoid hearing or seeing any of those matters while the trial is in progress. Cases in court are not supposed to be tried on the basis of newspaper information. They are not supposed to be tried by the media, although we know there is some occasions where that indeed seems like it might be occurring.
All right. The attorneys are trained in the Rules of Evidence and Trial Procedure and it is their duty and responsibility to make all objections which they feel are legally proper and appropriate. When a lawyer makes a legal objection in a case, I will attempt to make a ruling appropriately on that matter. You may hear terms of overruled, sustained, denied. Those terms are really not important for you. There are certainly important in the terms of the decisions made in the case. As you see, the court reporter will be taking down every word that's taken. And when I sustain or uphold an objection, a witness

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cannot answer the question. You should not speculate on what the witness might have said if I would have permitted the question. Similarly, you should not speculate on why the lawyer might have made the objection or why the Court sustained the observation. Those really are matters that are totally within the province of the Court. As I indicated before, it's my job in the case to make the legal rulings and decisions upon the admissibility of evidence, the rules that will be applied in the case. And so you need not concern yourself with it, but we have to caution you all to avoid speculating on what might have been had the Court permitted the introduction of the testimony or permitted the introduction of the evidence.

There may be occasions when a witness answers a question or when an item of evidence comes before you such that you could see it or that it might be talked about, and then, subsequently, because of legal rulings, it would be determined that the answer given by the witness or the physical item of evidence should not be used by you in your deliberations, that is, it's not appropriate evidence in the case. If that happens, I will be giving you an instruction on the testimony or on the evidence. And this, perhaps, is seemingly one of the more difficult things that judges and jurors have to do and that's ignore matters which came before you. If I do instruct you that you are to ignore the answer given by the witness or not consider a piece of evidence which you have observed, that's what you are supposed to do and you are to make a conscious effort to avoid considering that testimony or evidence if such an instruction is given to you. I mentioned to you that when what the lawyers say is not evidence and I have just mentioned to that you are supposed to speculate on why the Court might have sustained an objection and you are not supposed to speculate on what an answer might have been. You also have to be careful not to draw an inference from a question. Since what the lawyers say is not evidence, parts of their question or inferences from the question should not be evidence in the case. Reasonable deductions and conclusion can be drawn from answers given because answers by witnesses are testimony and jurors are permitted to make reasonable deductions and conclusions from the evidence in the case, but you need to be mindful of the witness's answer as opposed to a question containing some purported fact.

Naturally, since this is going to be a lengthy trial, we will be taking necessary breaks, recesses. During the trial, there might be times when it's appropriate for the Court to consider matters with the lawyers and I will try and do that sometimes at the bench. I think you observed that during the selection process. Now that you are closer so you can hear what the witnesses say better it causes a problem for that. You are closer now to me and, as you see, we have a lot of folks that will be coming to the bench. It's difficult for me to communicate with them and with the court reporter in tones sufficient to allow the court reporter and the lawyers to hear and, likewise, for me to hear what they are saying and avoid you hearing these things which you are not supposed to. Obviously, if we are up at the bench, these are things you are not supposed to be privy to. During those times, we may attempt to conduct what's called a bench conference without taking you out of the courtroom. You may find that our sheriff, and we'll have -- the sheriffs will be rotating in and out, but during these time periods of bench conferences they very often stand between you and me, usually right along the bar there that separates the jury box from the courtroom. There is two purposes for that. One is so that the sheriff is positioning herself or himself such that she can advise me if we are talking too loud or if you can hear, and another is to kind of provide a little bit of a buffer or distraction. She might engage you in casual conversation. You can feel free to stand up and stretch during this time period and you can even whisper among yourselves. You are not supposed to talk about the case. But that can cause problems, too, because it is difficult for the court reporter to hear when there is conversation. A long story short, we may result -- as a result, we may have you taken out of the courtroom. That does tend to slow thing down so I'm going to try and avoid that when we can.

If we are taking recesses for that purpose or any other purpose, I'm going to try and keep the recesses as brief as possible. We will be working in here. I want to assure you that we value your time and I operate from the principle that the sooner we get started, the harder we work, the more we do during the day, the less time we waste, and the sooner you all will be able to be released and

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go about your daily lives. And so do not fret. I know sometimes for jurors it seems like time is wasting, but I plan on being extremely mindful of your time during the trial and I promise you that I'll make every effort not to waste your time. But we also have to ensure that all of the parties in this case have a fair opportunity to adequately present their case. That includes certain legal arguments that might take place in the case.

During the recesses that we take where you are permitted to walk around the courthouse or indeed the leave the grounds to go to lunch or to go home, you might find yourselves in groups. Certainly, you will be in a group when you go into the jury room. I already told you, you are not supposed to discuss the case among yourselves during that time period. When you are in the hallway or when you are in a restaurant or when you are at home, you are not supposed to discuss anything about this case with anyone your family, a stranger, people involved in the case. It goes without saying that it would be inappropriate for anyone in this case to have some communication with you about the case.

Perhaps, I should exclude the sheriff. The sheriff, obviously, is going to be talking to you about when you are supposed to come in, when you are supposed to leave and things of that nature. The sheriff will not be discussing evidence or testimony with you, however.

We have a very nice court facility here. As taxpayers, we have done a nice job for the courts in Pinellas County. This building was opened in the '70s and it remains very appropriate for proceedings today. But you will notice everybody involved in this trial is going to be coming and going on those elevators and probably the hallway and the lobby. So you are going to be coming into contact with the parties, perhaps witnesses, obviously, the lawyers and the other individuals involved in the presentation of the case. The lawyers are aware, keenly aware, and their staff, no doubt, has been advised that it would appear to be inappropriate if they were seen talking to a juror in this case outside of the courtroom and it doesn't take much of an imagination to understand how problems could arise like that. Well, suppose if one of the jurors was seen chatting with one side, one lawyer involved in the case outside of the courtroom. People might question, well, what in the world are they taking about. And so because of that, the lawyers are aware. They don't want to have any communication with you however benign or harmless that is, including what a nice day it is, things of that nature, things that ordinary nice people like the lawyers in this case are, the parties in this case are, would like to say if they are riding up and down the elevator or happen to bump into you in the hallway. So please do not hold it against anyone in this case, either side or the lawyers involved, if you are in the hallway and they do not have a casual hello or a good word to say to you. Indeed, it might even appear that they are snubbing you. You might get on elevator and they might not get on the elevator with you. If they do that, it's not because they don't like you or because they wouldn't like to have a nice conversation with you and be very cordial and friendly, as no doubt the people involved in these proceeds are. It's because they are keenly aware of the appearance of impropriety which could exist if they communicated or appeared to communicate with you outside of the courtroom. That's just good, old common sense and also comports with the rules of the Court.

If anyone does attempt to contact you or to say something to you about this case outside of the courtroom, you are to tell them to stop, that you are a juror on the case and, hopefully, that will be obvious to them. That's one of the reasons we want you to wear the red badges. You know, people's appearance can change from day to day. You could have a tee-shirt on on Monday, you could have a suit and tie on another day and somebody might not recognize you. But if you have the badge on, everybody should be forewarned that you are a juror in some case and they shouldn't be talking to you about anything about any case. If somebody attempts to do that, you must immediately tell them to stop. You should report that to one of our sheriffs immediately so that Court can take the appropriate action if that's necessary.

One of the things that has developed in the last few years is that we permit jurors to take notes. And there was a question about that and you were for-advised we do permit you to take notes. The Supreme Court has actually derived an instruction on that because it may not be as simple as it appears. Jurors

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are permitted to take notes and, on the other hand, you are not required to take notes if you do not want. So we are going to provide note pads and pens for you, the facilities that you are to use in taking notes. We prefer that you use the note pads that we give. If you need, if you are prolific in writing notes or doodling, whatever you are going to use the pad for, feel free to ask for another pad when you need it. We will give you as many pads as you need, I guess, pens, too. So you need not be worried about it. I am going to suggest in the beginning if you receive a pad, you will all receive a pad and whether you are going to take notes or not, the first thing you do is -- these are going to be smaller pads then this-- I have one here.
THE BAILIFF: I have it right here,
Your Honor.
THE COURT: They are like this. Yup. I'm going to suggest the first thing you do is write your name conspicuously on the very front page and that that's the only thing that you ever write on that front page. And that's because we are going to ask that you leave your notes in the jury room. We don't want you taking your notes home. And your notes are your notes. So, thus, if you have your notepad with your name, if anybody comes in they will see that's your notes and they are not supposed to look at your notes. So then you begin taking your notes, you take them on the remaining pages.
The notes that you take, if you take notes, will be for your personal use. However, you are not going to be permitted to take them home, and at the conclusion of the case, you are not going to be able to keep the notes. And now you are starting to think, oh my God, are these notes going be filed in the court file in this case? The answer to that is no. Okay. So the next question is, well, who is going to look at those notes after the case? The answer is no one is going to look at those notes. I am going to ask the sheriff to collect your notes, your note pads, at the end of the case. The notes are going to be personally delivered by the sheriff to me. I am personally going to shred and destroy those notes without reading them so you need not be concerned about your spelling, your comments to yourself, the accuracy of your notes, the beauty of the pictures that you might draw to assist you in concentrating during the trial or in relaxing in the jury room. Nothing about those notes is going to be revealed in this case.
The notes, I need to caution you a little bit about if you are going to be taking notes, please do not get so involved in the note taking that you distracted from the proceeds. And you know that one of your jobs is to listen carefully to the testimony of the witnesses. Your job also involves evaluating the credibility of witnesses. You will find from the jury instructions that common sense is going to prevail in that regard. And one of the things that you will use in evaluating the credibility of a witness is the way the witness testified, that's inclusive of the demeanor of the witness, which is a fancy word for how the witness appeared, how they acted, whether somebody was shifty on the stand, their eyes darted back and forth and sweat popped out on their brow. these are the kinds of tools that we use as a human being evaluating the credibility of people. And if you have your face buried in your notepad and you are not observing the witness, you may not be able to pick up on those visual cues.
Another caution about the notes, obviously, these are to be used as an aid to your memory, if you wish. You can share them with other jurors during the deliberative process, if you wish to do that. Since you can't communicate about the case before deliberations, there would be no circumstances that you could share your notes with other jurors before that time. You do not have to share your notes during deliberations. And just because there happens to be somebody in the jury deliberation process that looks like they have taken tremendous notes, looks like they are a court reporter, that doesn't mean that they are going to control the decision in the jury room. You can take it or leave it as you wish as a group. You can use those kinds of notes, but we need to be mindful that every juror's consideration, vote, ideas and thoughts and decisions in the jury room is equal. And the verdict, ultimately, in this case, each and every answer to any interrogatory verdict question must be unanimous. Finally, with respect to taking notes, no one's notes should be given greater weight than a juror's independent memory, if you believe your independent memory should

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prevail in the case.
There was another matter that I need to discuss with you before we embark about the opening statements. And this is just a very brief matter. I permit jurors to ask questions during trials. And this is something that perhaps even now to some judges is unthinkable. I know that for years no judges permitted any jurors to ask questions during a case, and there are really some very valid reasons for concern about that. I'm going to cover that with you. Obviously, I'm soliciting you to raise your hand and ask questions if you say something like, Judge, I can't hear, could you have the witness speak up. That's not the kind of question I'm talking about. We have given you these note pads. If, at a time during the trial, you believe it necessary that a particular question be asked of a witness, you could write that question down, submit it to the sheriff. Do not put your name on it. We don't need to know who is asking the question. Obviously, we will know it's one of the jurors. The sheriff will bring that to the Court. I will review the question. And it could possibly also be that you have a question that you wish the Court to answer during the trial, and you must write that question down. Obviously, this is a question unrelated to what time are we going home tonight or those kinds of questions, you can raise your hand about. But a question that is directed to the evidence and the proofs and the law in the case is what I'm talking about, you would write that question down, hand it to the sheriff, and give it to me. Any question that you would propose like that I have to discuss with the lawyers and I have to apply the same rules of law and procedure to determine the permissibility of that question that I will apply to questions which are posed by the lawyers in the case so I might accept or reject a question. If I do happen to reject any question that's asked, if there is a question asked in the case, you should not apply any significance to that or speculate on why I might have rejected the question. We are not soliciting questions from you and, frankly, in the cases that I have advised jurors that they have the prerogative, very few questions have been submitted to the Court during the trial of the case. And I think that there are some reasons for that and some very good reasons for that.
Perhaps the best reason is that it's not your duty as the independent decision maker in the case to prove anything in this case. And we learn about this as judges at our judicial conferences. When we don't have jury trials we have bench trials and judges are doing the jobs that you are doing. That is, in certain types of cases, frankly, all divorce cases, family law cases, judges not only decide what the law is, but they decide what the facts are, what the -- we evaluate the credibility of the witnesses just like you are going to have do. We decide what's been proven, what the true facts are and apply the facts to the law. So we are advised at some of our judicial conferences that if we ask questions during a proceeding like that, if it's a decent question, if it's a question that means anything, it's either helping somebody, a party in the case, or it's hurting a party in the case. And if a judge is involved in helping somebody prove their case, that's not really being a good judge. If the judge is involved in asking a question that hurts the other side, perhaps the judge is stepping in the role that is appropriate for one of the lawyers in the case. So we are actually cautioned about asking questions. I think the same kinds of principles apply. You need to consider that it's not your job to try to prove things in the case. If there are things not proven, questions left, well, that might be a failure of another concern.
Regarding questions, there is a very practical reason, you don't know what the next question a lawyer is going to ask is. Frankly, I don't know what the next question a lawyer is going to ask is. So if you sit there patiently, as judges and juries have to do, one question comes, the answer comes, a question comes, and if you are wondering about something, how a witness might answer a question you have in your mind, you don't know perhaps until the witness is excused if somebody decided to ask that question or not. We are not going to call somebody back after they left to answer a question a juror might have. That's the practical and pragmatic application of common sense to juror's questions. The bottom line is you may be permitted to ask questions under those very limited constraints that I gave you. We are not soliciting questions from you. I really do not expect we will need to have a lot of questions in this case.

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Those are the basic instructions on how a case operates and your duties and responsibilities and cautions that you need to be mindful of. I am happy to take breaks during the trial. I know we might need to set something up, to make sure all the equipment is ready. I'm going to give you all a brief recess for your comfort and convenience to use the restroom, take a drink of water. We will be coming back at ten o'clock to start the opening remarks of the plaintiff.
(Thereupon, the jury was excused from the courtroom.)
(Thereupon, a brief recess was taken.)
THE BAILIFF: All rise. Court is back in session.
THE COURT: Thank you, Sheriff. Bring the jury.
Are we ready to proceed, gentlemen?
MR. ACOSTA: Yes, Your Honor. .
THE COURT: Sorry for the confusion. What we are trying to do is to get you as close as possible to the witness box and that seems to have done it.
THE BAILIFF: Jury seated.
THE COURT: All right. At this time, we will proceed with the opening statement by the plaintiff.
Mr. Acosta?
MR. ACOSTA: May it please the Court.
My name is Howard Acosta. Good morning. This is John Eastman. It's my job to represent him in this case and I'm doing it with Bruce Denson over here and both of us will be involved in the trial throughout.
Now is my opportunity to start the trial, really. This is Mr. Eastman's day in court, so to speak, although it's going to take more than a day. We do have a lot of evidence to present and a lot of information to provide you with. You know, it's -- it's something that we will try to be as considerate of your time as we can. I know the Court mentioned that, but the attorneys are mindful of it also on both sides. I'm sure that nobody wants to waste anybody's time so we are going to try to be as efficient as we can. Sometimes it may not seem that way and sometimes there may be -- there is information that's provided to you and you really don't know how it fits in the scheme of things or why it's even being presented. You think to yourself, what is this all about. Well, sometimes there are certain kinds of information that we have to provide that creates certain kinds of records or is foundations for other evidence and may be technical in nature. It's obviously not like television where you can do a whole case or a whole trial in a half hour show. It doesn't work that way. It's quite a bit more complicated.
My job, at this point, is really try to give you, in the next hour or so, a simplification of what it's really all about, how many witnesses there may be, and what's happening, what kind of evidence is it going to be. I have the notes that I made on one sheet of paper just to remind me of some of the thing that we are going to talk about or I'm going to talk about with you this morning because I mentioned during jury selection there is only three times when I really get to talk to you. This is the second one. And then you won't get a chance to hear we talking directly to you again until the very end of the trial.
And, you know, one of your jobs, as the judge mentioned, was, you know, listen to all the evidence and I'm going to ask you at this point to try to remember, if you can, some of the first witnesses in the case because I know from past experience in the longer trial by the time the closing arguments or by the time you are able to go back into the jury room and deliberate, it's hard to remember who the first witnesses are. So I'm going to ask you at this point, if you would, to, you know, if you are going to take notes, take notes, try to take them uniformly throughout the case. You know, it would make it a little fairer for both sides, probably, if you had notes that went to all witnesses. If you just take down notes as to a few witnesses and you forget, you know, you might just get tired of taking notes after a while and then forget and then things will be out of proportion or out of context. But I would ask that you try to remember the witnesses that come on early on in the case.
The -- this case is about accepting responsibility, and I want to tell you that Mr. Eastman accepts responsibility. And what we are trying to do, what

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plaintiff does in a case like this is to put on proof about the defendant and to ask you at the end of the case to make the defendant responsible. And that's what this is all about is we are going to ask you at the end of the case to make the defendant responsible. We don't blame the defendant for all the cause in the case. We don't blame them for all the cause. We -- we accept some of that ourselves. The plaintiff, Mr. Eastman, accepts some of that.
So, you know, part of this case is a balancing and I mentioned those scales in the jury selection process. And the plaintiff has the burden of proof. And something that I'm usually permitted to talk about in opening statement is what our burden is and so forth. And, again, it's that tipping of the scales, but it's easy to get confused about that and so I'm going to ask you if you could keep a couple of things in mind as you hear the evidence. If you -- if you -- it's not a situation where you might be trying to weigh, well, how much of the cause was Mr. Eastman's versus how much of the cause was one or both of the defendants because if you did that and found that, well, Mr. Eastman may have been more of the cause of it, then you might think, well, he shouldn't be able to recover. But that isn't going to be the way it turns -- that isn't the way this works. I want you to understand that going in, that it's not a matter of balancing him against them. What you are going to be doing instead is trying to determine whether we have proven the case against the defendant by a greater weight, in other words, if the defendant is any responsible, any of the cause, then we are permitted to recover from the defendant. And you are entitled --
MR. PARRISH: Your Honor?
THE COURT: Is this an objection?
MR. LYDON: Yes, Your Honor. .
THE COURT: Overruled.
MR. ACOSTA: You are entitled to consider that and the evidence in that light. Okay. So I want you to be thinking in terms of whether we have met our burden in proving that the defendants played a role in this. And during the trial, I'd ask you
to -- to think about, you know, not only what we are proving, but also what the defense is and what evidence that they show you about their choices, about their conduct, about how their conduct was involved in Mr. Eastman's smoking, about how their conduct was involved in causing his disease.
And I can tell you at this point -- I'm going to go into this in a little bit more detail
later -- but Mr. Eastman has a fatal disease. He has end-stage chronic obstructive pulmonary disease, sometimes that's called COPD. In his case, he has COPD of sort of two varieties. The primary one is a diffuse emphysema. And emphysema, I will tell you more about a little bit later in the presentation, but basically most of his lungs are destroyed. He also has another terrible problem. He has an abdominal aortic aneurism and I'll tell you about that as well. He is going to need surgery for that. And we are going to put on proof that his cigarette smoking was a significant contributing cause of both of those conditions. That will be our proof, that it was a significant contributing cause. Many things have more than one cause so we are simply going to prove that cigarettes were a significant contributing cause and that's going to be the way that goes.
There are going to be different kinds of witnesses in the case. Some are expert witnesses, doctors. There is going to be one or two historians in the case that will give you a history of tobacco. I think you will find it pretty interesting. I'm going to try to give a little bit of an outline in advance as we go through this next hour or so, and give you some idea of what that history is so that when you hear the historian you will have some idea of what he is talking about and why he is involved in the case. And all of the witnesses tie into the issues and the proof in the case.
There is going to be a doctor, hopefully, here tomorrow. His name is Dr. Jacobs. He is an assistant professor at the University of Florida. He is an addiction medicine specialist and he will be explaining to you the physiological aspects of nicotine dependance and nicotine addiction. And I'm going to talk more about addiction as we go through this as well. A lot of people look at it in different ways and I want to share with you how medical doctors look at it and what they can do about it and what happens to somebody, how it affects their

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behavior when you become addicted to a substance, and how it affects choices and decisions that you make when you become addicted to a substance.
So choice is going to be an issue in the case and you are going to hear a lot about it and much of it will be from the defense side of case talking about choices that Mr. Eastman made. And, yes, we all make choices in life and I'm going to tell you about his choices and when and how and why they were made. That's another part of what I'm going to be talking about. But when the choice thing comes up, and you will hear a lot about it, I'd ask you when you consider this evidence, it comes in little pieces, in little pieces, and they are really discombobulated. I mean, I can't tell you right now that it's going to look like the Eiffel Tower or
Mt. Everest, but I can tell you it's going to be a picture of something on land. When these little piece come in about choices, I would ask that you keep in the back of your mind, well, I want to compare all the choices that are made and compare them to choices that the defense companies, the cigarette companies made as well. Because we are the ones suggesting that, in fact, we are going to prove in this case, that's what our proof is, that the cigarette companies made terribly wrongful choices.
And we have claims in the case. And that's how you come to trial. You have claims. And we have, basically, I'm going to call them three, three claims, but they are difficult to divide up and, believe me, we spent a lot of time trying to hone them down to their bare essence, but the first claim is whether or not the defendant, Philip Morris, that's the first defendant although they aren't the first ones named in the case, but I think you will find that they will probably be going first many times, maybe not, but Mr. Lydon represents them, and Philip Morris made terrible choices, wrongful choices, and so did Brown & Williamson. And we are going to prove that the things that they did were contributing causes to death and disease of Mr. Eastman. And that what they did is they influenced how the consumer looked at cigarettes over the years.
Now, one thing you have to keep in mind is that this case is not about a young person that just started smoking or somebody that started smoking in the last 30 years. This is a case about somebody that first put a cigarette butt to his lips in 1940. And part of the difficulty in a case like this is asking people to go back in time. You really have to get in a time machine. That's what we are asking you to do. That's one of reasons we are going to have a historian is to ask you to go back into the '40s, back into the '50s back into the '60s because we claim that adequate information was not provided to smokers. Adequate information was not provided to Mr. Eastman so that he could make good choices. We are going to show you that the cigarette companies had the information and they didn't tell the truth about it.
We don't have a claim that they failed to warn after people came to know that cigarettes were dangerous. And that occurred, we believe the evidence will show, about 1970. That's when the first actual warning went on the cigarette package that said, warning, cigarettes are dangerous to your health. Then later that warning was increased in 1985 and provided more information. The first label that went on a package was in 1966 and that label said, caution, cigarettes may be hazardous to your health. And back then, people thought, well, it may be hazardous to your health, maybe it isn't. If you are a long-term smoker, you already had been doing it for many years and you see a caution label, the evidence is going to show that people like that didn't react to it very strongly. It took time for people to accept that the cigarette, the thing that they were smoking, had been smoking wherever they wanted whenever they wanted, as many as 20 to 40 times a day, all of a sudden, they began to realize it's inherently dangerous. And you will hear testimony in this case that after -- well, throughout the -- almost the entire last century through the '40s, '50s, '60s, '70s '80s, '90s, throughout that time, Philip Morris and Brown & Williamson -- by the way, Brown & Williamson is being sued, not only as an individual company, but it is a successor in interest to the American Tobacco Company. They bought the American brand. So they will be responsible for both their own company and
American Tobacco so you are going to hear both, even though -- so when you hear American Tobacco think Brown & Williamson because they are -- although they were separate companies up until about 1994 or '95, they are sort of the same

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defendant in a special way. I'm sure you will hear some kind of an explanation from their lawyers when they stand up here. But those companies, both of them, all three of them, they denied the danger. They denied the danger until just a couple of years ago. And so, you know, a lot of people a couple of years ago, people didn't believe them.

But back in the '40s, '50s, and '60s, it was different story, and we are going to put on evidence to show you that it was something that came along here. And, believe me, the plaintiff in this case, Mr. Eastman, is not saying, hey, I thought, you know, smoking cigarettes was like eating carrots. We -- when people smoked cigarettes back in the '20s, '30s, '40s, '50s, '60s, '70s, they thought that smoking was acceptable and maybe a little risky. All right. But they didn't think it was dangerous. And you may hear about how, you know, how risky they thought it was. There may be some proof in the case. For example, that people thought smoking was no -- smoking a pack a day in the late '50s was thought to be no more dangerous than getting in and out of the bathtub. That's what people thought. Everybody back then was smoking. You were a square, that's what they used to call it, people, if you didn't smoke back in the '50s. So, and this is something that's kind of incredible, but one of big news stories in the '50s was Sputnik. Well, we started up the astronaut program in the late '50s. The Mercury 7 astronauts, John Glenn and the rest, four of them smoked. It's kind of incredible to think that, but it's true. Four of the astronauts smoked. So life was different back then.

I'm going to tell you a little bit about John Eastman. I'm going to get a little bit into the plaintiff, but I want to talk about another claim first, and that's the design claim. We have a claim that there were things about the cigarette, things done to the cigarette. It's not -- we are going to show you that what people thought and knew about the cigarette wasn't really what the cigarette was. It was a drug delivery device. And the tobacco in the cigarette is not exactly what people think, either. It's specialized, blended, cased, fortified with sheet tobacco, which is something they manufacture from stems and little bits and pieces. They put it in a slurry, mix it with water, take the chemicals out of it, and put back in what they want. They put lots of ingredients in it. I'm going to tell you a little bit about that a little bit more in a minute. But the cigarette is designed. It simply isn't something that you just take a bunch of leaves and you roll it up in paper and there you go. That's is a cigarette, but the cigarette that they design and make is extremely complicated. How they do it was top secret, top secret ingredients although in later years they have been giving the ingredients out to the government. The government reviews them to determine if they are safe and so forth. And most of the ingredients on their surface are. But you are going to hear evidence that there is tons of really unsafe stuff in cigarettes, over 63 carcinogens. And you are going to learn from the evidence about what a carcinogen is. And although Mr. Eastman doesn't have cancer, I want to tell you that when somebody has diseases like this, there is not a day that goes by that he doesn't wonder am I going to be coughing up blood today. He has got this serious lung problem.

So carcinogens are substances that produce cancer in animals because no one experiments on people. You don't give people carcinogens to find out if they are going to get cancer. They experiment on animals. And Philip Morris's documents we are going to show in evidence that they knew all about this, that they knew that these carcinogens are dangerous to animals. They wanted to take them out, but they realized they couldn't take them out. But there is a lot of other stuff in the cigarette. There is pesticides. There is all kinds of chemicals, ammonia, stuff that is put into the cigarette to give it flavor, to make it inhalable. I'll talk more about that when I tell you a little bit more about the history of tobacco. So we have a claim that the cigarette didn't meet consumer expectations in the way it was designed. Its utility is outweighed by its inherent danger. And we are going to ask you at the end of the trial to find that the cigarettes that he smoked, we are not talking about every cigarette, but just the way they made the ones he smoked because this is about Mr. Eastman. We are not here to have you find something that going to affect you know, national markets or anything like that. This is just about just his cigarettes and what he smoked and what they did in making them.

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The last one is we are going to ask you to punish them and we are going to ask you to -- that part of the case is like in two phases. You don't have to do that if you don't want to, but if at the end of all the evidence if you feel the cigarette companies should be punished for what they did, then you will mark a yes and then we will come back for a very short, almost a mini-trial on that issue alone to determine how much, if any, you should award. So one of the things to think about during the trial as you hear the evidence and so forth is did they do something, did they not tell the truth when they should have, did they fail to meet obligations that warrant punishment. You will hear instructions from the Court on what the standards are and so forth and I'm not going to touch on that now, but I don't want you to be surprised at the end of the case when we say, you know, look, what they have done is wrong and they should be punished. We are going to ask you to do that.

Now, let me tell you about some of the defenses in the case. They are going -- that's really what they are going to tell you about so, but I want to touch on them briefly. And there are things for you to consider as we go through the evidence and, that is, well, did the cigarette companies have to tell Mr. Eastman anything. Did he already know everything that he needed to know? You see. And if so, when did that occur? So, you know, we are not suggesting that he didn't know anything. He did know quite a bit and he is a smart guy. And I'll get into the kinds of things that he did in life in a minute, but he was aware say, as of 1960, that cigarettes might cause cancer or disease. We certainly don't deny that. But he didn't have the same kinds of information the cigarette industry had and although he heard those things, he heard other things from them. He heard things from the defendant. So one of the defenses in the case is that there was common knowledge of risk, and we agree, there was common knowledge of risk. But those risks were acceptable risks, low risks. It wasn't thought that the cigarette was dangerous. I'm going to probably tell you that more than once, until later on, until later on. And I'll tell you why.

I think you are going to find a lot of the trial very interesting in seeing some of the old advertisements about cigarettes and it may surprise you. You know, there were advertisements back then that said eminent ear people, ear, nose and throat specialists, doctors, they put on ads saying, doctors recommend Philip Morris. All right. More doctors smoke this brand than any other brand. You know, so many thousands of doctors have done these tests and they think that this brand doesn't irritate your throat and so forth. Yes, people knew that smoking could be irritating and so they would advertise that this cigarette takes all the irritants out. We have got some new chemical we in it to do that. So, you know, in a the nutshell, I'm going to go through this in more detail in a minute, but this is where its headed.

They have a cigarette that they began to think, well, people are starting to think that maybe something wrong with it. That happens in the '50s so the cigarette companies said, well, we are going to take all the bad things out of there. if there is anything in there, we'll take them out. We'll fix it. They slapped filters on there. They get people to think, well, we're going to fix it. We'll take it out. If there anything harmful, we'll take it out. And we'll do research. We will do lots of research. And we are -- we are going to tell you what we find in our research. Of course, then the real reason for the research was just to make people think that they were going to do something, make people think that they were going to take care of the problem. And the research was not really about the problem. What they wanted to do was find, hey, maybe something else is causing cancer. Let's research that. Let's give the AMA $10 million to research this and we will find out in 15 years what they say. Let's keep selling cigarettes in the meantime, though. That's what they did. And they kept doing that all the way along.

Now, at the same time, of course, public opinion is gaining. People began learning more and more and more and more. That's why back in the '50s and '60s, over half the population smoked. Over half the adult population smoked back then. Today, it's very small now. Well, there is a reason for that. People know a lot more about smoking today then they did back then. so keep that in mind when we talk about this common knowledge issue. Keep that in mind. Keep in mind that, you know, first it's a caution label, then it's a warning label. What does that tell you? It tells you people back then didn't know, otherwise -

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- you will get to answer the question yourself. I'm not going to argue it to you right now.
But let me talk to you a little bit more about the history of tobacco for a second. We can start with Christopher Columbus probably because that's when they found the native Indians smoking tobacco and chewing coca leaves and stuff like that on the islands. And so the Spanish started shipping tobacco back to Europe. England was involved in it and King James in 1604 wrote a thing called a Counterblast to Tobacco and said this is odious to the nose and loathsome to the eye and it's a terrible thing, don't do it and Sir Walter Raleigh was in his court smoking away. Sir Walter Raleigh made smoking pretty popular and King James didn't like it. King James is the one that wrote the King James version of the Bible. It was kind of a moral issue for him. Sir Walter Raleigh liked smoking. They named a cigarette after him.
But then, back then, all the doctors got involved in cigarettes, I mean not cigarettes, tobacco. They didn't have cigarettes yet, tobacco. And the doctors thought, well, cigarettes can cure cancer, can cure sores, can cure all kinds of things. It was medicine. It was prescribed. It was thought to fight the plague. They had a big plague in Europe. Everybody remembers that from history, this huge plague in the Europe, millions of people died. And they thought tobacco was a cure. They had school boys smoke a pipe of tobacco before they could go to class to keep the plague out. That's what they thought of tobacco.
And over time, prohibitionists and others, the Victorian era come along and you are not supposed to take medicine for pleasure, not supposed to do too many things for pleasure. Alcohol was banned for a while. The banned cigarettes in the States. Many states had laws banning cigarettes at the turn of the century. The cigarette was invented some time in the 1800s. It came over with the immigrants really. In Europe, the immigrants would roll up tobacco in paper and smoke it. Then the industry got started when they invented a machine that could make thousands and thousands and thousands of cigarettes in the industrial age. And so by around 1914 or 1915 the match gets invented. So now you can carry a portable package around with cigarettes in it and have a match and you can light it whenever you want. It made it really easy. Before then, people would smoke after dinner. The men would like go into one room smoke cigars or something. The interesting thing about cigarettes back then, nobody got lung cancer. It was unheard of. 1900, like 140 cases of lung cancer in the whole country. Doctors never saw that until cigarettes came along. Cigarettes are the only truly inhalable form of tobacco. Pipes you don't really inhale it. You might get a little whiff of it. Cigars, the same way. That tobacco is too alkaline. It's harsh. You can't take it and go -- like you do a cigarette.
The cigarette was designed to be inhaled. And the reason for that is nicotine gets to your brain in about eight seconds. And that instant hit to the brain is one of the things that causes the addiction. You put a patch on your arm or you chew a nicotine gum, you get it very, very slowly over time. It isn't going to cause the same kind of reaction that you get to that cigarette. People that smoke, it's that first cigarette in the morning, second cigarette in the morning, maybe the third cigarette in the morning. The first thing they do when they get up in the morning is smoke a cigarette, confirmed regular smokers. The last thing they before they go to bed is they smoke a cigarette. They'll stand out in the rain on the side of a building and smoke a cigarette. You go to the radiation therapy center where people have cancer and are getting treatment and look on the ground there are cigarette butts everywhere. Half of the people that get cancer continue to smoke after they have been diagnosed. 40 percent of the people that have had their voice box removed continue to smoke.
I'm going to tell you some statistics about addiction. 15 million people try to stop smoking every year, if you are a smoker. 15 million try it every year. Three percent, some studies five percent, eight percent, maybe it's as many as 10 percent, three percent are successful in staying off cigarettes for a year. You got -- every year you got 15 million people try, only three percent of them are able to stay off the cigarettes for a year. It take multiple, multiple tries. Okay.
Anyway, getting back to the history, so the cigarette become very popular in World War I. it's a patriotic thing. They had bonds. They sent cigarettes

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overseas. People didn't know. In the'20s, all of a sudden women are wearing short dresses, they called them flappers and women are smoking in cigarettes in the '20s. Lucky Strike was a very popular cigarette back then, very patriotic. It was a green package then. And World War II come along. Again, it's very patriotic. There were -- there were campaigns. They had campaigns to make green a popular color before the war because Lucky Strikes were in green packages.

I want to talk a little bit about advertising because it fits into all of this and I'm going to weave Mr. Eastman in into the history. He was born in 1928 and he -- by the way, he was diagnosed with emphysema in 1995, to give you some idea how long he has had it. This didn't happen to him yesterday. It happened to him about eight years ago and living like this, but I'll get into that a little more in a minute. Back in the '20s and '30s, advertising was a big deal. Cigarette advertising was huge. They advertised, for example, to women, smoke instead of taking a sweet. Skirts had come up and they appealed to the woman's desire, you know, to look thin and to have attractive legs and so forth, and they talked about, well, if you smoke cigarettes you won't have big calves. It's incredible, but that's what the advertising was about back then. They would hire athletes, professional athletes, amateur athletes, to promote cigarettes. They had big billboards everywhere. Cigarette advertising was huge.

Back then there was no television in the '30s when Mr. Eastman grew up. He would listen to the radio. He grew up in Iowa, in Cedar Rapids, Iowa, little teeny town out in the prairie. All right. He would listen to the radio broadcasts as a kid. Well, guess who sponsored the radio broadcasts? Philip Morris, other cigarette companies, they would have Johnny, call for Philip Morris, the little guy. You younger people won't -- you will see him, but you don't know what I'm talking about. We are going to show you some of this stuff. There will be videos of some of the old ads and so forth in the trial. So smoking was very popular. Mr. Eastman, when he was a kid, when he was about 10, 12, 14, something like that, smoking coffee grounds and toilet paper and corn silk and stuff like that and his mom and dad smoked. His dad was a veterinarian, the first small animal veterinarian in the country. His mom and dad got divorced. His dad moved down to Miami. He would take the train by himself at age 12 all the way down to Miami from Iowa spend time with his dad and go back. By the time he is 14, he is smoking cigarettes. He remembers a particular incident at a doctor's house in Cedar Rapids where he is in the basement with the doctor's daughter and they smoked their first cigarette, whole, you know, first full complete cigarette. His dad gave him cigarettes on the train, not when he was 12, but by the time he is 14, 15, 16 he is, in his junior and senior year in high school, he is smoking. When he was smoking, he wasn't defying any risk when he started smoking. He wasn't smoking, you know, this is risky, I'm going to smoke or, you know. At that time, it was the popular thing to do. It was advertised everywhere. It was okay.

Now, that's not to say that breathing smoke in your lungs was thought to be good for you, but I can tell you they were advertising athletes saying, Camels don't cut your wind. They have got those ads. Camels don't cut your wind. Now the quarterback on his football team didn't smoke. he played football in high school. A bunch of the football players smoked. The quarterback didn't like it. He said, don't smoke. You shouldn't smoke. It'll cut your wind. The ads say it won't cut your wind. Well, you know, he smoked. Everybody smoked.

1950 -- or '50, he got married, I think, the year out, 1947. He went to the college, Iowa State, didn't do so well there, came down to Florida and went to the University of Florida for a couple of years with his wife. He wanted to be in broadcasting. as he grew up, smoking for him was something that adults did. It was a sign of manhood. You know, in the '40s, it was -- Lucky Strike changed its color. Green went to war so after the war they changed the package to white. He smoked mostly Lucky Strike cigarettes throughout that time, which were made by the American Tobacco Company, the defendant in this case.

And then we get to around 1950 and back then 18-year-old men and older had to register for the draft. He got a draft notice. Instead of getting drafted, he went down and volunteered for the

Air Force and he got an award, an honor medal in the Air Force in boot camp. He

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was in the Air Force a couple of years, but then his mother got very ill. His wife got ill. They were in Iowa and so he was released on early discharge and went back to Iowa, but he wanted to go to Hollywood. By the way, I want to tell that when he was college he produced some plays. It was in the arts. Mr. Eastman is journalist broadcast person, TV personality, and I'm going to go through quite a bit of that with you. But he wanted to go out to Hollywood. And so Betty, his first wife, after a few years, she didn't like the media. They split up. And he then met Marilyn in Miami, I believe. In the profession that he is in, he wound up traveling all over the country. It was very hard on his life and his family and, you know, caused a number of breakups. But then he married a woman named Marilyn, who he has two children by. One of them, I think, you will see. He will be our first witness in the case. His son is Michael. He is a deputy sheriff over in Tampa. And he will be the first witness. He'll talk a little bit about his knowledge of his dad.

But, anyway, back to what was going on in around 1950, there started to be publicity that cigarettes were causing cancer and there is a cancer scare. About 1953, there was published in Life magazine that painting the tar on the backs of mice could cause cancer. What's interesting, though, is that that research, research doing that kind of thing began in the '30s. They didn't really make it public at that point. The cigarette companies didn't tell anybody about it. They cranked up their own research departments in the early '50s and what their plan was was to deny it and they did. There were headlines in the newspaper. It was news. It was news. There was headlines in the paper, cigarettes linked to cancer. Of course, every television show in the '50s was -- almost every show, I shouldn't say every show -- almost every show was either owned or sponsored by cigarette companies. All the shows, they smoked on the shows. They were smoking everywhere on the TV. They would give out cartons of cigarettes as consolation prizes in the game shows.

Mary Tyler Moore smoking cigarettes. Dick Van Dyke,
Bob Cummings, Jack Benny, Jackie Gleason, all smoking. Walter Cronkite was smoking. People smoked. They smoked because they thought that it was an acceptable thing to do. Whatever the risk was, it wasn't that big a deal. That's what they thought.

Now, they start to think it may be a big deal because this cancer scare comes out in the early '50s. So what does the cigarette industry do? They have a meeting and in the meeting they say, listen, we got to do something about this. So we are going to publish something that's called the Frank Statement. And they had a meeting in 1953 and in 1954 in all of the major cities in the country, in every city over 50,000 people, they published a full-page ad or a half-page ad, big ad that said, Frank Statement to Cigarette Smokers. People have heard. There has been wide publicity that cigarettes have been linked to cancer. Well, we want you to know what we think about that. They said, first of all, the cigarette companies -- and all the cigarette companies signed this thing. They all signed it including Philip Morris, Brown & Williamson, and American Tobacco. And they say, no proof cigarettes cause cancer. They say, we do not believe cigarettes are injurious to your health. For the last 300 years, people have from time to time said there is something wrong with cigarettes, but all of those claims are abandoned as untrue. They say, but, we'll tell you what, this is what we are going to do. We are going to form what's called a Tobacco Industry Research Committee and we are going to get independent people to come in and do research and we will give them money and they can do the research and we are going to tell you what we find out. In the meantime, we don't believe cigarettes are injurious to your health. That's what -- then they had a huge publicity and promotional campaign. And they hired a company called Hill & Olton in New York, a big advertising company. And what they would do is they would contact writers and people in the news and they would attempt to influence stories, provide what they thought was their side of things.

See, they didn't accept what the scientists were saying. They decided that -- they found some other scientists that they liked that said, oh, we don't think there is anything wrong with cigarettes. So what they did is they chose to tell people, don't worry, keep smoking and they are advertising things like, you know, you will get the greatest health protection from Parliament made by Philip Morris or Kent made by another company. Be happy, go lucky, was Lucky Strike's

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ad at the time. More doctors smoke Camels. Mr. Eastman primarily smoked Luckies, but he smoked a lot of different brands. There are other companies that are not here that he, from time to time, smoked their brand.
In the '50s, he and his wife, Marilyn, were watching an ad about Kools one time and they tried Kools. They had little penguins back then. Smoke Kools for a cold -- smoke Kools for your throat. They were menthol. They tried them. Well, they didn't like them so he switched to Marlboro made by Philip Morris in the late '50s.
So none of the companies back then, Philip Morris, Brown & Williamson, American Tobacco, never uttered a word of warning, never uttered a word that cigarettes were dangerous, never told anybody. And what they did instead was they denied it to their customers. Mr. Eastman was a great customer. They didn't want to lose any customers so they told them, keep smoking. They told them, it's good to smoke. All their advertising, tremendous images of vigor and youth and health. People water skiing smoking a cigarette while water skiing. Eating lobster. They invent the Marlboro cowboy. Marlboro, believe it or not, used to be a ladies' cigarette. It had white and red tips on it for ladies. It was a sophisticated ladies' cigarette until 1955. They recast the whole thing, changed it to a man's cigarette. It was a lady's cigarette and then it's a man's cigarette, Marlboro. They started advertising with guys with tatoos on theirs hands and stuff like that. They had people with slide rules. A slide rule is like an old fashioned calculator. You know, they had advertising campaigns like the thinking man's cigarette. That was Brown & Williamson, the thinking man's cigarette, or the voice of wisdom, you know. And they would have ads where they would blow through handkerchiefs. They had beakers and flasks and how their research was going to provide the best cigarette.
Well, what they were doing is they giving people a crutch and their own documents say that. You see, in the last 10 years or so these documents find their way out of the vaults of these companies and they find their way to Congress and are put on the Internet. And people found out, wow, this is what they really knew. And you are going to see some of those documents. you are going to see that they found in the early '50s that the cigarette contained these carcinogenic substances and they were concerned. They considered it a life or death matter. It was life or death to Philip Morris. There is a document that's difficult to explain so I'm going to tell you about it right now. 1952, Philip Morris Research Department had objectives of what they were going to research and they had a code, a 1 or a 2 or a 3, 3 would be not very important and 1 would be urgent, and then they would have like 50 objectives. Well, near the bottom of the list is trying to decide whether cigarettes caused cancer. That wasn't something they weren't very concerned about. They wanted to come up with new brands is what they were really trying to do.
By the mid '50s, the cancer scare was pretty much over. People are switching to filtered cigarettes. Marlboro is a filtered cigarette. Mr. Eastman switched to Marlboro. He liked the flip-top box.
And by the way, in the trial you are going to see little squibs of testimony. His deposition was taken in '98 and '99 and asked a lot of questions. And you are going to see the defendants pull up little bits and pieces of questions and answers and attempt to prove their cases out of little bits and pieces of answers. And I'm going to be showing you bits and pieces of documents, but you are going to have the whole document. You are going to have the whole document to go back with you. If I was to try to read the entire document to you in court, we would be here for six months. It can't be done. So you will be given little bits and pieces of information. The defense will have the opportunity to give you other bits and pieces of information. Mr. Eastman is going to get an opportunity on the witness stand to explain things that are stated in his deposition, which you are going to hear things in his deposition and think, how in the world, you know, can we find for the tobacco company when he says something like that. Well, I want you to remember he is going to be explaining what was said in his deposition because since then -- I'll give an for example. in his deposition at one point he said that he didn't try to get quit smoking after a certain point in time or that he never really tried, but since then, since that last four years, we found old letters, and old letter from a girlfriend where indicating how hard he tried to quit, the he tried cold turkey,

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which is putting them down. He had cut back. Then we find -- this is unbelievable -- he had gone to a psychiatrist in the mid '70s. The psychiatrist is treating him. He is psychoanalyst, and trying to get him to stop smoke cigarettes and he and he did cut way back to the low of 15 a day, but he tries another time. And his friends, one of the things that happened is the cigarette companies investigating this case had contacted all the people that he knew and had taken a lot of depositions. Well, a lot of those people remember him trying to quit. He didn't remember it very well. Now, his memory has been refreshed. So I want you to keep in mind that we are going to put on evidence that Mr. Eastman made many attempts to quit smoking and those attempts are either documented in writing or letters or medical records. And I'll go through that a little bit more in a minute to tell you the reasons for that because that's the typical scenario for somebody that began smoking back in the '40s or '50s.
Now, I have to explain that nicotine doesn't affect everybody the same way. Many people can smoke and they can stop, no problem. Other people, it affects very, very strongly. In fact, most people it does. Most people that smoke for any length of time become addicted to cigarettes. The ranges are between 70 and 90 percent. 70 and 92 percent of people that become regular smokers become addicted to nicotine. It's not like alcohol.
And I want to tell you Mr. Eastman has had problems with alcohol. He, in his occupation, it's a very stressful occupation where he would interview people. He interviewed Claude Kurt, for example. You know, he interviewed lots of people on his TV shows and radio shows. Claude Kurt was the governor of Florida. And he would come home, he would drink, and sometimes he would drink to excess. I think there will be evidence that he was not considered an alcoholic, I want you to understand that. But he did seek help. He had a psychiatrist, a different one. He had lots of doctors on TV and radio shows and he would smoke during this period. That wasn't really the issue. But he thought drinking, he was drinking too much at one point and a doctor prescribed Antabuse for him. He took it, got sick a couple of times from drinking. He thought he had been off the Antabuse long enough and he wasn't. But he doesn't have any drinking physical problem, no liver problem, no nothing like that. But I want to get that out because that's going to come out in the trial and I don't want you to be surprised about that. The drinking is something he could control. The smoking was something that he could not control. And at least he got help to control with Antabuse, but I don't know that that had anything to do with what ultimately caused him to take control of that because he hasn't had a problem with that for many years.
The smoking, however, he probably would still be smoking had he not gotten pneumonia in 1995. And he got pneumonia, was taken to the hospital, was there for a couple of weeks, IV shoved into his arms, oxygen, and he was deprived of cigarettes. He was deprived of cigarettes long enough. And gets home, he is still sick. He was too sick to smoke is what happened. And he gets through the withdrawal symptoms and all that after a few weeks. Then he is able to refrain from smoking and plus he has got this terrible disease. Wrap that all together and that enabled him to refrain from smoking. You will hear testimony about how that happens and how people get shocked. That's why about half the people that get cancer quit. You are going to hear that
50 million Americans have quit smoking since 1970. It's slightly less than half, about half the people that start, continue to smoke, they try to quit, they can't quit, they don't quit, whatever the reason is, about half or almost half were able to do that. Mr. Eastman was not in the half that was able to do it as much as he wanted to. He got the point where smokers get in denial. They get in denial of what do you do when you try and realize, I can't do it, I can't do it, what do I tell people, I'm embarrassed by it. He had a sponsor on the show one time. It was called Smoke Enders. They sponsored a radio show that he was doing and he tried to quit smoking. And he says, this is a fraud, I can't, I can't do it. the first day he is off cigarettes for 26 hours. The first day and show and the next day and show, and then after the show he had to smoke. He had to tell the sponsor, give them the money back, I can't do it.
The late 1980s, he had impotency problems and goes to a doctor and in that doctor's records, the doctor says, you know, Mr. Eastman won't be able to quit smoking. He was one of those people that won't be able to quit. Now, I'm

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telling you that there were tries, there were failures, there were psychiatric help to try to get him to quit. He wanted to quit. He lived those last 15 years or so saying, you know, what can I do. I can't quit. I'm a smoker, you know.

When people first smoke a cigarette, the very first one or two you smoke, you choke, you gag on it, it makes you nauseous, it makes you sick because nicotine is toxic, but it's a drug. And after a few cigarettes, you develop what's called tolerance and then you need more and more of them to maintain that tolerance. And that addiction is physiological. It rewires your brain. It grows receptors in your brain that require nicotine. And then when you don't have it, you get restless, you get anxious, you get nervous, you get irritable, and all you want is a cigarette. You crave it. You have a very strong craving for it. It's different kind of drug. It doesn't cause euphoria. It's not like an amphetamine or anything like that. It's a different kind of drug. But it requires you to use it about every so often. There is a dose. Every smoker has their own dose and they get that dose from a cigarette. Now, there is a range. The cigarette industry knows what the range is. They put enough nicotine in to keep the smoker addicted.

Now, the nicotine levels have come down over the years, you see, because you don't need as much as was originally in the cigarettes. The early on cigarettes were very strong and a person wouldn't have to take that deep inhalation. And then they started lowering the nicotine content. People are taking deeper inhalations. They are smoking more and more. They are buying more cigarettes. They are covering up the ventilation holes with their fingers unconsciously. It's called compensation, smoker's compensation.

You know, a regular cigarette -- what they did is they invented a machine in the 1960s and then they put a regular cigarette on it and it takes two puffs and it determines how much nicotine and tar is in the cigarette. Well, then they take the same cigarette, they put a filter on it, punch holes in the wrapper with little lasers, little tiny holes for air dilution, and they put that cigarette on the machine, and it's diluted with air so it gets a lower amount. They call that a light cigarette. And then the ultralight is exactly the same. They just put more ventilation, more filtration or different filtration, different blends, and now you get even lower tar and nicotine. So when the smoker smokes, he has got a dose requirement. He has an amount he had got to get and you get used to it over time. So if you are an ultralight smoker and somebody gave you a regular cigarette, you wouldn't take a big inhalation, you just take a little bit because you wouldn't need as much. But you are still getting the same dose of nicotine no matter which cigarette you smoke. You get the same amount of stuff in your lung no matter what cigarette you smoke.

That's been known by these companies. Their advertising that talks about the filtration is an illusion. It's a gimmick. They didn't tell the public about it. The public thought the filter was something that take the harm out of it. It would make it better.

Now, in 1964 the Surgeon General -- well, a little bit before that President Kennedy was asked before he was, you know, President Kennedy, are cigarettes safe. President Kennedy and Jacqueline smoked. And he says, I don't know. Let's appoint a commission. So they appoint nine doctors, four or five of them smoked. And so they determined in 1964 that, yeah, the cigarette causes cancer, and it's -- it's -- we need to take remedial action. That means to fix it, you know, fix it. So what happens

Harry Reasoner, the next day on the news -- by the way, the Surgeon General's report comes out on a Saturday so it won't affect the markets. On Monday, Harry Reasoner has a half hour show about the Surgeon General's report and on the show he has a former Philip Morris director appear and he is smoking, you know, away on TV and they ask him, well, what do you think about the Surgeon General's report. He says, well, you know, we would like to be an investigator just as much as the Surgeon General and we think that a lot more research needs to be done. We disagree with the report. The industry disagrees with the report. The industry doesn't think there is anything harmful in the cigarette, but if there is, we will find it and we'll take it out. And Harry Reasoner says, you know, it sounds like maybe an old friend has betrayed us. Maybe we should give them a chance to reform. See, that's in the mid '60s. And then what happens is

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we get the caution, cigarettes may be hazardous to your health label.
So by 1970, that's when Mr. Eastman is starting to try to quit smoking starts trying to quit smoking in the early '70s. And he tries cold turkey. He tries cutting back. He tries not smoking as much, goes to a psychiatrist in '78, can't do it. Smoke Enders program in '82, can't do it. He didn't think he could do it.
That's why their conduct is tied to his. Their conduct ties to his because what they did they made is they made cigarette a drug delivery device to keep him addicted. That's how they stay in business is addicting people to nicotine. People won't smoke their cigarettes if they didn't addict them to nicotine.
Now, people knew a long time ago that it might be hard to quit smoking. They didn't know how hard. Back in the Reader's Digest in the '50s, there were articles about smoking. In fact, there was articles talking about cigarettes. now, there were thousands and thousands of
Reader's Digest articles. There were a few on smoking. If you happened to see them, you'd know the Reader's Digest was really antismoking.
But back in the early '50s and the time of this cancer business they were saying, you know, the habit of smoking is kind of like driving a car or eating three meals a day, you just put your mind to it and that's it. Over time, they have come to know that it is addicting. And Philip Morris today admits that cigarettes are addicting. Today Philip Morris admits they case cancer and emphysema. Today Philip Morris admits that cigarettes are inherently dangerous. All of a sudden, big change of address for Philip Morris. They should have done that back in the '50s. In fact, one of their vice presidents said around 1954, '55, you know, if there is something harmful in the cigarette that's going to hurt people, we ought to go out of business. They don't do that. Instead they denied it. Their documents show how they denied it. Everything they did was a counterattack on what they call the propaganda of the anticigarette forces. They looked for ways to -- they formed what's called the Tobacco Institute, which was headed by a former senator to put out information that there was nothing wrong with smoking. they denied that there was a problem. back in the '50s and '60s, that was the word on the street. People said, well, here's one group of people that says cigarettes might hurt you, but the cigarette industry says, hey, it's okay to smoke. We deny there is any problem.
Here's Mr. Eastman. Here's the consumer. Mr. Eastman thinks, you know, if cigarettes were as bad as these people say, the cigarette companies would say so. They would tell me that. The cigarette company would me that there was something wrong with the cigarette and they didn't. See, there was no reason why they couldn't have warned people back then, but they didn't. They choose not to. That was their choice, you see.
And that's why our claim in this case is that they contributed to this, that they were a significant contributor to this. We are not saying they are the only ones involved here, but you are not weighing it against Mr. Eastman, you are just weighing it against whether they did, whether they did contribute, and that's what our evidence is going to show on that point.
I want -- I want to talk a little bit about Mr. Eastman. You are going to hear all about
his -- you are going to hear all about his career. I mean, he wrote one of the episodes of The Fugitive, which was an immensely popular show back in the '60s. He has produced movies. He did voice-overs for the United Way for the NFL. He had a TV show in Tampa. He was a radio broadcaster. He has been married a number of times. I talked about Betty and Marilyn, and then he dated and met -- oh, know, then he married Alene King. Well, he came up in Miami on radio with Larry King. You know, the guy on TV that everybody is probably aware of. Well Larry King and his wife, Alene, got divorced and then John married Alene and they got divorced and Larry married her again. They are good friends. And then he got married again in the '70s. The last one that he married he met in the early '80s and then they got divorced after she took him to the hospital for pneumonia. She is a bit younger than John and you will see her as a witness as well, you will hear from some of the people. Her name is Terri Legatti. You will hear from her.
But I want to go into this, a little bit about what's happened to him as a result of this and then I'll be finished. He has this end-stage emphysema.

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Now, what happens when you smoke cigarettes is there is gases and chemicals in it and they are very bad for your lungs. You don't realize it, though, because you have a tremendous amount of reserve in your lungs. The capacity of your lungs is enormous. And so here I'm drawing a couple of lungs here and there is about where your heart goes and this would be your left lung. And it's know that, you know, if somebody lost a whole lung, say in World War II you got shot in the right lung and they removed your lung, well, you do just fine on one lung. You do just fine on one lung. In fact, now, you know, we cross off this lung. Now, we start working on this one. You get down -- to down to here, you have this much lung left. This is when you start feeling symptoms. Now, I have done this in kind of a funny way because emphysema doesn't like take out one lung, it gets spread out in both lungs. Your lungs are -- you know, you have little bronchial tubes and then they get smaller and smaller and then at the end you have air sacs called alveoli, and those air sacs and these tubes carry the air in and out. What happens when you have emphysema is these things break, see, and then you have a big cavity here. So instead of having all this all surface area to exchange the oxygen with your blood and expel carbon dioxide, now all of a sudden you can't do as much because of this destruction. And it's permanent. It's permanent.

And most people that smoke, they damage their lungs, but the thing is they don't get to the clinical evidence of it until you are down to this level, see. Once you are down here, that's when you start feeling the symptoms of emphysema because when you get down in this area, you have got to have supplemental oxygen. Mr. Eastman was on supplemental oxygen after he had the pneumonia. Then he was off for a while and then emphysema progressed. He has been on oxygen now for several years. He can't be without it. He turns purple or blue. When he gets low on oxygen, he gets cyanotic and he is going to die from this if he doesn't die from the aortic aneurism. This makes it extremely difficult for them to operate on his aortic aneurism, which they have to because it grows. It grows every year. his aorta, here's the heart, it comes up and over. Here is the diaphragm. The aorta comes down here and then is some arteries that branch off to go to the kidneys and the liver and stuff like that. It's the main -- it's big, you know, and it feeds your lower body. Well, what's happened to his is it started to balloon out. It's caused by smoking. It's caused by high blood pressure. Smoking is a significant contributor to this. you will hear his doctor, Dr. Back talk about that.

Now, what they do is they -- they have to operate. They slice it open and then they put a plastic tube in there and put it back together. And his is -- his is -- the last time they looked -- it was just diagnosed in late November, just diagnosed. And it's 6.4 or 5 centimeters and it grows a few millimeters every year. When it gets up to 7 it's like a 50/50 chance of bursting, 25 to 50 percent chance of bursting. He has got to have the surgery on it otherwise it's eventually going to leak or burst, and when that happens you die. In his situation, there is nothing they can do for him. So right after this trial he is going to be going in for surgery to have this fixed.

Now, he could have had this done before the trial, but he didn't do it because the surgery is very risky. He has got a 1 out of 10 chance of dying on the operating table and a 30 percent chance when he gets out of being on a ventilator until he dies because they have to put you on a ventilator. And so he and the doctor talked about it and the doctor agreed that he could wait until after this trial to have the surgery done because his aneurism is likely not to grow. The risks are about the same either way.

Now, this lung condition in Mr. Eastman, of course, you know, he can get up and walk around. He can't walk very far. He can go to the bathroom that kind of thing. He will see him in this wheelchair, but that doesn't mean he can't get up or stand up, but he is pretty much wheelchair bound. He lives in Tampa. He is staying over here for the trial. He doesn't have the voice and stamina to do the things that he wanted to continue to do. He was doing these United Way voice-overs. His voice with emphysema is not strong enough for him to do that anymore. He wanted to produce pictures. He doesn't have the energy. He is just extremely tired all the time. He doesn't have the energy to do that.

And so, you know, at the end of the case you are going to take all of these things into consideration that I have been discussing with you, and I mean, you

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are going to hear stuff. For example, I know you are going to hear this that, well, he liked to smoke. Well, that is what an addictive drug is. You wouldn't do it if you didn't like it. You see, that's how addiction works. When you first smoke a cigarette, you don't like it. Nobody likes a cigarette the first time they put it in their mouth because it causes you to get sick. There might be somebody that tried one and liked the first one they tried. 99 percent of the people don't. But then what happens is that drug takes over and you find that smoking is a habit because it affects your behavior. You know when you are a smoker that you are going to light up at this time or at this intersection or when you are on the phone and when you are doing this. It causes you to become relaxed a little bit, but this is the interesting thing. The cigarette creates the stress that it relaxes because when you are without one for 30 or 40 minutes, now you are edgy and nervous and you got to have another one and then that cigarette reduces the stress and you think you like it so you think that it's making you feel better, but it's the thing that's causing the stress to begin with. That's the cigarette. It's a very unique item, a very unique substance. And, remember, it's the only thing, the only kind of tobacco that you really inhale and it was designed for that purpose and designed to do this. And they provided a crutch for people telling them that they would fix it so that, not caring, really, what happened to people at the end. They just wanted to get new smokers to take over.

That's the cigarette industry. And that's why we are going to ask you to punish them. But, you know, that will be up to you after you hear the evidence. I wouldn't want you to hold it against us for asking.

I think that pretty much covers what I was going to tell you about our presentation of the case and would ask that this is the last time I talk to you until when this is all over so please try to remember what the plaintiff's witnesses say when you hear the other evidence in the case and carry all of that back together with you when you make your final decision.

Thank you very much.

THE COURT: Thank you, Counsel.

Counsel, approach the bench for a minute.

(BENCH CONFERENCE.).

THE COURT: What's your pleasure?

MR. LYDON: Well, I'd like to go to the washroom.

THE COURT: How long are you going to take? I'm wondering when we are going to take our lunch break. Are you taking an hour?

MR. LYDON: No, 40 minutes.

THE COURT: We'll take a brief break and do yours.

(BENCH CONFERENCE TERMINATED.)

(Thereupon, the jury was excused from the courtroom.)

(Thereupon, a brief recess was taken.)

THE BAILIFF: Back in session.

THE COURT: Are you ready, Mr. Lydon?

MR. LYDON: Yes, Your Honor.

THE COURT: sheriff, bring the jury in.

(Thereupon, the jury was returned to the courtroom.)

THE BAILIFF: The jury is back and seated, Your Honor.

THE COURT: Thank you, Sheriff.

Ladies and gentlemen, we are now at the stage when Philip Morris will be permitted to give their opening remarks. I anticipate, from discussions with the lawyers, that these remarks will not be quite as long as the plaintiff's remarks, at least this portion. We will take our luncheon break at the conclusion of Philip Morris's opening remarks and then we will return after lunch for the opening remarks of Brown & Williamson.

At this time, Mr. Lydon, you may proceed.

MR. LYDON: Thank you, Your Honor.

Judge Rondolino, ladies and gentlemen of the jury, I am Matt Lydon again and I represent Philip Morris USA. Working with me will be

John Christopher who is seated here and

Nancy Faggianelli, who is seated back on the bench at the moment, both of them lawyers who will be assisting in the presentation of evidence and cross examination of witnesses on behalf of Philip Morris.

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I first want to thank you for your commitment to the civic responsibility and civil duty as sitting as jurors and I want to promise you the lawyers will work as efficiently and effectively as we can in order to make your time of service as short as it need be in order to hear all of the evidence in the case. And, again, thank you for your attention. And we will fully, now that there are two defendants in case, as you already gathered, I am representing Philip Morris and there are other lawyers, they will be introduced, Mr. Wallace and Mr. Parrish to address the other company, Brown & Williamson. And I bring that up at this point to let you know that in the course of working efficiently in keeping your time to a minimum, there will be occasions when one of the lawyers for one of the companies either won't ask questions on cross examination at all or won't ask questions on direct examination, but that doesn't mean that you don't consider all of the questions regardless of who asks the questions in evaluating and reaching your decision. That includes, of course, the evidence that comes from Mr. Acosta's witnesses as well. And again, during cross examination, you may hear both lawyers, lawyers for both companies asking questions on cross examination. We are going to try to minimize that to the extent possible.

Now, Philip Morris, as you gather, manufactured Marlboro and also manufactured Benson & Hedges. They were the brands regularly smoked by John Eastman beginning around 1960 or thereabout when Mr. Eastman worked in Miami at a radio station hosting a show there and was dating or meeting Alene King. One of the things you are going to learn in the course of hearing the evidence is that Mr. Eastman, through no fault of his in this regard, everybody has different ways of remembering things. He is not very good on dates and when you hear the testimony I suspect you are going to learn that dates aren't as significant to him as events are. And so when I say that he began smoking around 1960, that's because the records establish it was shortly after that time he began dating an unmarried Alene King, and that's who probably either introduced him to Marlboro or she certainly was smoking Marlboro at that time.

Now, contrary to what Mr. Acosta has suggested to you, our view of the evidence is that this case will have much less to do with some internal company documents, or some old advertising, or what some tobacco executive may have internally said in the company many years ago, or whether some employees argued too long about the statistics connecting say lung cancer with cigarette smoking, much less to do with whether they quibbled and argued over the definition of what addiction or what addictive means, and it has much more to do with choice. And to be sure, our position is that Mr. Eastman made his choices in life, lifestyle choices, and one of them included cigarette smoking. He had other lifestyle choices that you are going to be able to draw your own conclusions about as you hear the evidence. It's also true that Philip Morris and Brown & Williamson made choices. And among the choices they made was to try to improve their product and you will hear testimony about putting filters on cigarettes and about trying to reconstruct or recondition this tobacco that people have smoked for a long, long time in order to make the product less harmful. They haven't succeeded in making it less harmful, not to this day, and frankly, it's doubtful, one might say, that cigarettes may ever be truly safe to smoke.

That doesn't mean, on the other hand, that Philip Morris didn't exercise the choice to make the good faith effort to try to improve their product. I think the evidence will be overwhelming that throughout the years with all of the changes that they have made to the cigarette, it was done with the purpose of trying to reduce the harm to smokers. Ultimately, though, those of you who have ever smoked or still smoke today, know that there are a broad range of products on the market to choose from, filtered cigarettes, unfiltered cigarettes, lights, and there are difference, no doubt, in the tar and nicotine levels that one can obtain smoking the different cigarettes. They are out there and they are available for people to choose from if they make the choice to smoke.

Incidentally, there is nothing that's been added to the cigarette that would make it more harmful nor has there been anything added to the cigarette that would make more addictive or more difficult for somebody to quit smoking.

Now, there indeed were old ads at that John Eastman began to smoke cigarettes that certainly, if you are old enough, you would remember and they did portray smoking as an enjoyment, something pleasant to do. And on the other hand, most

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of you will remember that those ads have been long gone for many, many years. At this point, all of the advertising has had warnings on it since 1972, nearly 30 years ago. They have been putting warnings on any ad that did appear indicating the danger to human health that you might get if you used the project.

Now, what we are asking you to did with respect to this issue of choice and suggesting to you is important is to consider not just his decisions to start smoking or to smoke in the '50s or '60s, but his decision and his choice to continue to smoke until 1995, which was long after all of those warnings began appearing on packages of cigarettes because the bottom line the diseases or injuries that he claims were caused by his smoking, would have been averted, would have been avoided. And you will hear evidence from experts on the subject had he quit smoking a lot earlier, in fact, had he quit smoking not so much earlier than the

mid '80s he wouldn't be in this position.

So the question before you in part and the evidence that I would ask you to focus on as it comes in here is to focus on who was in control of John Eastman's lifestyle choices. Was he committed to making healthy choices? Why did he smoke until 1995? And was his continued and continuing lifestyle choice the cause of his injuries? Let me take a moment -- slide one -- I want to talk to you about what we think the evidence is going to show, bottom line, with respect to this case. The first is that John Eastman was aware of the health risks of smoking and that the health risks were common knowledge. Now, you heard a bit about common knowledge. In some ways, it's also common sense, but it's been common knowledge for a long, long time that rolling up a plant leaf into a wrapper of paper and lighting one end and inhaling the other would be something that would not be good for your lungs. That common knowledge has evolved over time and people know a whole lot more about cigarettes and how they affect human health today than they did years ago. But the point is it's always been known that it was harmful to your lungs. That's something that Mr. Acosta alluded to. King James, that's something he said some 400 years ago. The other thing about common knowledge and there will be an historian that we will be presenting to you that will discuss common knowledge and explain it to you, Dr. DiBacco, he is an historian. He will be on the stand and he would take you through the times of the '40s, '50s, '60s, through the '90s or '40s, '50s, and '60s, which is really what we are talking about in terms of what was known back then and what was in the common knowledge or commonly known by people such as yourselves or me on the street who weren't scientists, who weren't working in tobacco companies, and what they thought about cigarette smoking and its risks to human health. John Eastman, himself, we know, as you have heard already has been questioned about cigarette smoking and about this lawsuit. He has acknowledged knowing since at least from the time he grew up that there was harms to cigarette smoking. And you know about his career as a broadcaster of TV and radio shows. He had talk shows. He did research. Our evidence is going to show at the bottom line that Mr. John Eastman has long been aware of the health risks of smoking and that the health risks were common knowledge.

The second thing we except to show is that John Eastman was not so addicted to smoking that you had no ability to quit. Our view of it is and the evidence will show that he did not make a good faith effort to quit. Now, I'm not suggesting to you that smoking or quitting smoking is an easy thing to do. It's a difficult thing to do and it requires effort. You have to have to have commitment. You have to try to quit and what we are going to suggest to you when you hear the evidence in the case from all the witnesses, you learned he was married several times, all of those women will either testify here live or their deposition testimony will be read to you and you can listen to what they have and judge what they have to say in determining whether he ever really made a good faith concerted effort, whether he tried to quit smoking, or is this a question where he didn't really want to quit smoking. That's what we suggest to you the evidence will suggest is that he really didn't want to quit smoking, therefore, he never made a good faith effort.

The third thing that we expect the evidence will show you is that there is no safer cigarette that Philip Morris or Brown & Williamson could have made that he would have smoked. One thing about cigarettes and the range of products that

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are out there that people, smokers that is, sometimes choose unfiltered cigarettes. Some of them choose filtered cigarettes. Some of them choose lights. And the companies over the years have done a variety of things that you are going to hear about in order to reduce the harm from their products. I emphasize, reduce the harm, because there is no such thing as making it safe to do. But in the course of that good faith effort of choosing to do what they could to make it safer, they put a range of products out there over time, tobacco products that you can smoke, which had different kinds of filters and permeable paper or filters that were so difficult to draw on that you couldn't really get that much out of them or were so diluted through the ventilation system that you didn't really get any smoke from them. Those products didn't sell. And the way in which both Philip Morris and Brown & Williamson work is to put the products out there and if consumers are buying them they will marketable and be available, but the bottom line is there was no safe product that either company could have made, which John Eastman would have smoked. Those are the three ultimate conclusions that I think you are going to conclude from the evidence that we will present in the case.

And the next thing I want to talk about is about the cigarette itself. Cigarette smoking, as you can conclude from what I just said to you, is something that's inherently dangerous. Cigarette smoking, it's conceded by the company, causes cancer, aneurysms, emphysema, and other forms of chronic obstructive pulmonary disease. You will hear it referred to as COPD more commonly by physicians and others. In fact, emphysema is a disease which is -- of the lung, which is actually a subpart of COPD. There are other forms of COPD, not just emphysema. COPD would be the broader category. Now, when I say that cigarette smoking causes these things, I'm not telling you that any scientists anywhere can come in here and say, this is exactly what happens. In other words, they can't show the mechanics of how it happens, but the statistics over time, particularly at the present time, are overwhelming, there is no denying the fact that from an epidemiological sense, which is statistics -- and you will hear that the word, epidemiology, all they are talking about is statistics -- the statistics are overwhelming that cigarette smoking causes these diseases. I want to hasten to add that that doesn't mean that cigarette smoking is always the cause of diseases such as cancer, aneurysms, emphysema or other forms of COPD. Other things cause COPD, excessive drinking of alcohol, believe it or not. You will hear expert testimony to this effect is a risk factor, the same thing we are talking about when we are talking about cigarettes for COPD. And in Mr. Eastman's case, there are other things that are a risk for aneurysms. Aneurysms, also a slight elevated risk for alcohol intake.

In 1960 or thereabout, maybe '61, Mr. Eastman had testicular cancer and one of his testicles was removed and his body was radiated, the trunk of his body here. Back then, the procedure that was followed involved not just radiating the area were the cancer was located, but involved also radiating the abdominal area and it'll be described for you by experts. They will show you the exact fields, as they call it, or parts of the body that were radiated. Radiation is a risk factor for his aneurysm. And that will be discussed, as I said, at length by experts who can explain it far better than I can. But I bring it to your attention and I'm going to be coming back to this cancer diagnosis and treatment in 1961, '62. Again, because it happened a long time ago, the records aren't available to tie it down. I don't think Mr. Eastman's recollection of a precise date would be anything he would want wants to rely on, either, but in that area of time somewhere after he was married to Marilyn Eastman and before he married Alene King, somewhere in that area, is when he had this testicular cancer diagnosis.

Now, what are the other basic facts that we want to come to? First of all, or second I should say, is that as I have already said to you there is no safe cigarette, there has never been a safe cigarette, and there likely never will be a safe cigarette. Even though the companies are working very hard and they might reduce the harm that may come from cigarettes, it's never going to be safe and your common sense tell you that, too.

Next. You wonder why -- these are the other basic factor, adults are aware of health risks and are free to choose to smoke. If it's true that cigarette smoking causes all these diseases and there is no such thing as a safe cigarette

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and it can't be made safe, why is it that cigarette smoking si still out there? Why is it that they still sell these things and permit people to buy them? Well, the reason is that it's a matter of choice again,. Coming back to this word choice, we, as a people in the United States, through our Congress have decided that had smoking should be a matter of choice, that is to say adults who are aware of the risks of smoking are free to choose to smoke if they want to. And the warnings, as we talked about, as you may well know, have been on packages of cigarettes now for a long, long time. But that's the third basic fact that's important to remember in terms of evaluating what this case is about. Adults, like John Eastman, aware of the health risks are free to choose to smoke. Thanks.

Now, before the warnings were even on the packages of cigarettes, John Eastman was aware of the health risks and made an adult choice to smoke. In his words in the course of the deposition, you could not grow up from 1940 on and not have somebody tell you not to smoke because you will get a disease. The intensity of that message increased and especially for Mr. Eastman. In judging whether John Eastman made a knowing choice, whether he knew and nonetheless chose to take his chances with the potential harm from cigarette smoking, consider what he did for his employment for the entire time of his life from the time he was in college to the present time. He is a college educated man. His father was a veterinarian, as you have heard. His stepfather was a doctor of osteopathy. He worked as a broadcaster in radio and television throughout his life at various times, wrote and narrated documentary films. He has been behind the microphone, in front of the camera, behind the camera most of his adult life talking about matters that included current events. Witnesses, such as his wives, will tell you that he researched things and stayed abreast of current events in the news because it was essential to his work. It was part of his life. It was part of the man he was. Not just -- there are other women who lived with him, not just the ones he was married to, and you will hear testimony from two of them, a Susanne Boots and Connie Fowler. Both of them will also describe him as an intelligent, independent thinker, who liked to read, a bright man. In fact, when they described him they said a voracious reader, voracious meaning he would read anything that he put his hands on. He also liked to watch television programs like
60 Minutes. Of course. He worked in this field.

Now, in the '50s there was actually -- when he was breaking into television and radio broadcasting, there was already a lot being talked about connecting cigarette smoking with lung cancer. Lung cancer is as big a warning as I can imagine can be put on a package of cigarettes as it has now. But the point is back in the 1950s there was a connection being made between lung cancer and cigarette smoking. If we can? These are important news events on smoking and health, what was reported in the '50s. it goes to what common knowledge was. It also goes to what likely crossed his desk or his workplace when he was reporting the news and dealing with the news in 1950. May 27, 1950 and you will hear about Drs. Winter and Graham, two researchers, two medical people, tied smoking to cancer of the lungs. 94.1 percent of males studied used cigarettes. Those are males who had lung cancer. 94 percent used cigarettes. This was reported in the New York Times. He was a reader of the
New York Times and you will hear. The
Des Moines Register, he grew up in Iowa and he back and worked in Iowa for good parts of his life. He was Iowa in the '50s, a further report Drs. Doll and Hill, two other researches, a real association between lung cancer and smoking. That was reported in the Des Moines Register. Life Magazine, 1953 again Drs. Winter and Graham reported results of a mouse skin painting experiment and concluded something in cigarette smoke causes cancer. CBS, now this was some of you may remember, I may be only one in the room back in 1955 there was a weekly news show called, See It Now, with Edward R. Murrow. And over a two-week period, there was a two-part show, a two-part series on smoking and health issues. You will see that and you will be able to see what was being said back then about the connections between cigarette smoking and lung cancer. Now, to be sure, no one was convinced at that point in time because when we are at this point in time, I already told you that to this day the mechanics or mechanism or showing how cigarette smoking causes cancer, that's not been demonstrated.

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Nobody can do it yet. But the statistics were just coming out. And at this point in time, as you see when you watch that show, there was a debate about, well, can we rely on statistics? Where is the science? Where is the real proof scientifically that this is in fact the case? You will see that discussed. But the point is this is a warning, if it's nothing else. Newsweek, June 13, 1995, Drs. Hammond and Horn release an American Cancer Society investigation, men who had a history of cigarette smoking had a lung cancer death rate seven times that of men who had never smoked. Time Magazine, June 17, 1957, Drs. Hammond and Horn, all smoking shortens life. Cigarette smoking is by far the worst offender. November 19, 1959, Surgeon General Burnee,
Surgeon General of the United States, cigarette smoking is the principal etiological factor in the increased incidence of lung cancer. In other words, what he is saying that's the principle thing that they can trace back for lung cancer is cigarette smoking. So this gives you a picture, a slight picture, it's not a complete picture at all, but what was going on the '50s, what was crossing his desk, what was out there for the public knowledge in the 1950s. . And as you have heard, Mr. Eastman's career in radio and television took him back and forth across the United States in the 1950s. He was in Iowa, California, Florida, all different places where he worked, Texas, Alabama, back to Florida. I mentioned and said that I was going to come back to this. In the 1960s a major personal crisis occurred in Mr. Eastman's life. Sometime around, I'm going to say 1961, okay, we can be off a year, it could have been 1960, could be '62, somewhere around 1961 he was diagnosed with testicular cancer and one cancerous testicle was removed. He received radiation treatment to the trunk of his body, as you will hear. He was first treated in California. Then he moved to Pennsylvania and took a job where there was good cancer treatment center there. He received radiation treatment there. He was closely monitored and, as you could imagine, this was -- must have been a frightening event for him and is one where he has acknowledged it caused him to really reexamine where he was and one that caused him concern. He went back to work, went about living his life, but this did, indeed, cause him to think about the concerns he had, the risk of cancer spreading or coming back. And I want you to consider that event in his life in conjunction with what Dr. DiBacco, the historian, will describe as occurring in 1964 as one of the major stories of the 20th century. In January 1964, the Surgeon General of the United States after being commissioned, actually this was a commission appointed by the president, then President Kennedy, to look into the links that were being reported, as you saw previously, between lung cancer and cigarette smoking and to report back on what they found. As Dr. DiBacco will tell you this was one of the major stories of the entire 20th century, meaning that it was covered everywhere on the news broadcasts over television and radio in all of the newspapers. We put a sampling up there just so that you can appreciate what a big story. It was the headline in Des Moines, one of the headlines in the
New York Times on the front page, and Life Magazine, which you are going to hear was a major -- had a major circulation back in the 1960s, it was a major story. So this is important to your understanding of awareness and what I want to suggest to you about that Surgeon General's report is that it must have had special meaning for John Eastman because here's a man who, at that point in time, is recuperating and, hopefully, past or hoping to be past a period of any reoccurrence of his cancer. And here's a man who has two young sons at that point in time. Consider how personal this message must have been to him. It's at a time relatively close to the radiation treatments. It's at a time when you will hear he had uncle who smoked and was dying of emphysema. I mean, how did he react at that point in time with all of these events coming together, the Surgeon General's report, his recuperation from cancer? What decisions did he make about how he was going to live his life?
We had an opportunity to examine him and ask questions of that sort and there were questions put to him by the lawyer as to what he did and how he reacted and some of it is apparent from how he went about living his life thereafter. Despite the message, despite smoking being linked to cancer, despite his own cancer and radiation treatments, he continued to smoke. He has acknowledged under oath that he reexamined how he was living his life and he has admitted that he realized that smoking was related to lung cancer and respiratory disease

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so he has said he was personally aware. He said, I was aware of the dangers but none of them I applied -- excuse me, let me start again. This is a significant statement he made. I was aware of the dangers, but none of them applied, I thought, to myself. You are going to have to decide what he meant by that and you will have an opportunity to try to explain what he meant by that. I suggest to you that the meaning is pretty clear that he decided to choose to continue to smoke and take his chances. That's what he meant when he said, I was aware of the dangers but none of them applied, I thought, to myself.

On the subject of addiction during that same period, he stated two more points which are somewhere near the heart of this case. At or around 1964 he says he felt he was unable not to smoke and was addicted. He said, I began to think in terms of it being something more than a habit that I could put down or should put down or wanted to put down and I didn't so I didn't. Again, we come back to the common thread throughout this case that we are going to ask you to pay attention to, that matter of choice. And so John Eastman knew that he would have to work at quitting if he wanted to quit and he knew it for a long time. He knew it would take real effort and commitment and he chose to act otherwise. One of the major questions for you will be did he ever really make any genuine effort to try, did he really try to quit? Did he want to quit before 1995? We think from the evidence, using his own words again, that he was never, quote, in the mood, close quotes, to quit. You know, we human beings sometimes choose to do things that give us pleasure, but aren't especially wise, but they are gratifying. They give us satisfaction even if those choices are unhealthy choices. And you are going to hear from witnesses that in the 1960s, 1970s, 1980s after reexamining his lifestyle, John Eastman not only smoked a lot of cigarettes, he also drank alcohol in excess after this. What he was going to do, how he was going to live his life, he smoked and then began to drink in excess enough so that in 1978 one of the few records that have been located that go back that far and not very long after this self examination of lifestyle, he was told by a physician in Iowa that he should stop drinking alcohol. He had an enlarged liver at the time. He was told he should stop altogether. As I said, his alcohol consumption is a risk factor for his COPD and his current condition and he did not follow that advice.

Next slide, please. Now, this is a slide that talks about something that Mr. Acosta was addressing and it's really to give you an idea of what the lungs are about, how they work, and what is true of cigarette smokers and what benefits might John Eastman have derived, what might he have achieved had he quit at an early point in time.

For all people, once you get past your 30s, as you can see, and move into your 40s, you have a loss of lung capacity that's measured, see that FEV, it's forced expletory volume. what that means is they have this test where they ask you to blow into a balloon and whatever you can blow into that within one second measures the forced expletory volume. For people, normal people, nonsmokers, which is what you see in that band up there, everybody loses that approximate rate over time as they continue to live. At the same time, you are going to hear, as Mr. Acosta pointed out and he is absolutely right, that you can live without one whole lung. Humans are born with enough lung that if it were spread out, it would cover a football field, believe it or not. And, in any event, there is more than enough to last you through life and if you are a nonsmoker those are the volumes that you would expect to see. For smokers, it's somewhat reduced, but not to the point where they wind up with emphysema. Most smokers, believe it or not, don't get emphysema. Only about 15 percent of smokers will ever develop emphysema over the course of time. If you quit smoking, you revert to the normal curve, that is to say, if you are a smoker and a line were drawn, and experts will be in here to explain this to you in more detail than I need to do at this point, a smoker instead of having a line that follows as that nonsmokers does, the smokers is a little more -- lower and a little more gradually a loss of function. But if you quit, you go back to the same rate of loss, so there is an obvious benefit for quitting and it's an obvious benefit that if John Eastman had made a choice to quit, clearly shows he wouldn't be where he is today.

You know, let's talk a bit about quitting. Did he ever quit? And you heard this statistic referred to, or ever attempt to quit, as 50 million other

http://legacy.library.ucsf.edu/tid/sqq07a00/pdf Source: http://industrydocuments.ucsf.edu/docs/prgl0001

Americans did between 1965 and 1995. Slide, please. This gives you a dramatic picture of just what those numbers are. 50 million Americans have quit smoking between 1965 and 1995. Half of all people whoever smoked cigarettes have successfully quitted -- have successfully quit. 1.5 million Americans quit smoking every year. Now, I think, Mr. Acosta said 70 to 90 percent of smokers are addicted. This is the number that he suggests. You are going to hear from the evidence. And I'll suggest to you that you apply that number to this, then what you have to conclude is that there are about 40 million Americans who were addicted who quit smoking, 70 to 90 percent of that 50 million Americans who have quit smoking. If 70 to 90 percent of people that smoked are addicted, then that suggests that 70 to 90 percent of the 50 million who quit were addicted smokers who did it. How did they do it. You have to work at it. You have to really try. Next slide. 90 percent of cigarette smokers quit on their own now. There are these other aids out there, nicotine patches, nicotine gum, behavioral therapy, hypnotism,
Smoke Enders. There are any number of ways that people seek assistance to try to quit smoking. But the bottom line is that 90 percent do it on their own. They do it cold turkey. They quit. How do you do that? Well, it take effort. You have to try. You have to be committed. You have to work at it. It's not something that's easy and we are not here to suggest that it is.
What we are suggesting is that it wasn't a choice that Mr. Eastman made. What we are suggesting is that he didn't try, that he didn't work at it. And it's going to be up to you to decide from the evidence, from the testimony of women who lived with him and others who were around him, whether he ever really exerted that effort, exercised that will power, that you have to do in order to accomplish things that are difficult in life. The big question for you is going to be why didn't he quit sooner, why didn't he quit before 1995? Did he put forth a commitment that's necessary to make a healthy lifestyle choice, or did he choose to do what he wanted to do? I'm going to suggest to you that the evidence will show that John Eastman made a lifestyle choice in the 1960s we talked about already and he lived his life that way. He certainly followed through with his decision. This is what I'm going to tell you what his lifestyle choice was and sooner or later he will say it. I'm going to smoke and I'm going on smoking and I'm going to take a drink when I want one. That's how he resolved that he was going to live his life after he thought about his own disease, after he thought about the other events coming down around him, and if he is in a condition today and you are going to hear about these other risk factors for his disease, if in fact it's the result of cigarette smoking, then that's solely based on what he choose to do. He choose to continue to smoke. He choose not to make a genuine effort to quit. He is the one who said he wasn't in the mood. He is the one who said, I'm going to smoke and I'm going to go on smoking and I'm going to take a drink when I want one. And you are going to hear that he took more than one drink, he took a lot of drinks. And those women that lived with him and some of them are going to tell you about that. All of that is why he is where he is today. And after the end of the case, we are going to ask you to determine that he should not be awarded money for what were his choices and his decisions as to how he wanted to live.
Thank you very much.
THE COURT: Thank you, Mr. Lydon.
Ladies and gentlemen, as anticipated, we will take our luncheon break at this time. I'd like to take about an hour. If you could be back in the jury room in approximately one hour we will try to be ready to go at that time.
Counsel, can we break for an hour?
MR. PARRISH: Your Honor, can we approach?
THE COURT: Yes.
(BENCH CONFERENCE.) I'm just idly curious,
what was so bad about my slides if Mr. Lydon was able to show his slides of the testimony?
MR. LYDON: The difference is I didn't say it was his testimony. I didn't quote it. I said that was what was going to be said one way or that's what I expect the evidence to show.
MR. PARRISH: I see no distinction. It's representing what the man's testimony in deposition would be. What's the difference?

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THE COURT: It related to the Rule of Completeness in a 600-something-page deposition of the plaintiff.
MR. ACOSTA: There is a lot more to his I did not get. The only slide I saw of his was that one. I didn't -- I didn't know he was going to continue to leave the quotes in on it. I thought he was going to paraphrase it. He didn't. I didn't think it was significant enough to stand up and interrupt his opening over. Also, I didn't have his handout like I had yours beforehand. I would have objected to some other things, the New York Times and all that. I would have objected to it once it was there. I wasn't going to interrupt his closing. Your questions and answers are quite a bit different. You are presenting in advance what the evidence is, not what you think it may be. In a way, that prevents me from using the Rule of Completeness to put those things in context. His was bad enough, yours is a lot worse. I continue to object to yours.
MR. PARRISH: I have complete questions and complete answers to each quote. The Rule of Completeness, he has a right to put things in some point. He had a choice.
MR. ACOSTA: No, it doesn't say that. It's contemporaneous.
THE COURT: As I indicated before, the Court ruled before.
(BENCH CONFERENCE TERMINATED.)
END OF VOLUME VII
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C E R T I F I C A T E
I, Yvonne P. Habis, Court Reporter, Notary Public, in and for the Sixth Judicial Circuit, Pinellas County, State of Florida at Large, do hereby certify that the said hearing was taken at the time and place stated herein; and that the said hearing was recorded stenographically by me and then reduced to printed form under my direction, and constitutes a true record of the testimony given at the time of the hearing.
Dated this 13th day of March, 2003.

Yvonne P. Habis
Court Reporter
Notary Public
(727)443-0992

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